

CRIMINAL DIVISION OVERVIEW

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I. INTRODUCTION

Welcome to the Criminal Division of the New Jersey Judiciary. The Criminal Division is responsible for managing indictable cases from the time of arrest through the time of disposition. The Criminal Division Overview provides a synopsis of the criminal case proceedings, criminal division procedures, and judiciary policies and best practices. This overview is intended to provide an introduction to the Criminal Division of the Superior Court for staff assigned to the division. The overview was prepared under the advisement of the Conference of Criminal Presiding Judges, along with the Conference of Criminal Division Managers and the Criminal Practice Division of the Administrative Office of the Courts (AOC). It has been approved by the Judicial Council, on the recommendation of the Conference of Criminal Presiding Judges, in order to promote the education of Judiciary personnel.

The Criminal Division Overview is intended to embody the policies adopted by the New Jersey Supreme Court, the Judicial Council and the Acting Administrative Director of the Courts, but does not itself establish case management policy. While the overview reflects court policies existing as of the date of its preparation, in the event there is a conflict between the overview and any statement of policy issued by the Supreme Court, the Judicial Council, or the Administrative Director of the Courts, that statement of policy, rather than the overview, will be controlling.

II. NEW JERSEY JUDICIARY MISSION STATEMENT

We are an independent branch of government constitutionally entrusted with the fair and just resolution of disputes in order to preserve the rule of law and to protect the rights and liberties guaranteed by the Constitution and laws of the United States and this State.

A. VISION STATEMENT

We will be a Court system, characterized by excellence, which strives to attain justice for the individual and society through the rule of law. We will:

- Provide equal access to a fair and effective system of justice for all without excess cost, inconvenience, or delay, with sensitivity to an increasingly diverse society.
- Offer complementary methods of dispute resolution while preserving the constitutional right to trial by an impartial judge or jury and ensuring compliance with the results achieved through effective enforcement of court orders.

- Provide quality service that continuously improves, meets or exceeds public expectations, and ensures that all are treated with courtesy, dignity, and respect.
- Maintain the independence of the Judiciary while strengthening relations with the public, the bar, and the other branches of government.
- Acknowledge and enhance the potential of every person in our organization to contribute to the administration of justice through participation, training, and technology.
- Share a sense of common identity and purpose as a statewide Judiciary.
- Earn the respect and confidence of an informed public.

B. STATEMENT OF CORE VALUES

"The New Jersey Judiciary continues to serve as a model for courts around the country because of the strong leadership of Chief Justice Rabner and the entire Supreme Court. We remain confident in our ability to navigate the realities of limited budgets and reduced staff to provide the basics of our core mission because of the talent and strength of our workforce. We have had success because of the support and strong collaborative partnerships with the other two branches of government. We remain committed to striving for greater efficiency in the face of ongoing fiscal challenges, as we continue to effectively resolve disputes, protect rights and liberties, and ensure justice for all." Hon. Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts.

Required to accomplish our mission are four paramount values representing the core of what we stand for as an organization. These core values are:

- | | |
|---|---|
| <ul style="list-style-type: none"> • Independence • Integrity | <ul style="list-style-type: none"> • Fairness • Quality Service |
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III. CRIMINAL CASE PROCESS OVERVIEW

This section describes the basic steps a criminal case will follow from the initial filing of charges until disposition and post-sentencing proceedings.

A. PRE-INDICTMENT

The pre-indictment phase of criminal case processing encompasses all actions taken in relation to the case from the filing of the initial charges through presentation of the case to a grand jury.

There are up to six stages of the criminal case process before a case is indicted: (1) the filing of a complaint; (2) the issuance of a summons or warrant; (3) the first appearance after complaint and the setting of release conditions; (4) the pretrial detention hearing; (5) pre-indictment court event(s), such as the pre-indictment conference; and (6) presentation of the case to a grand jury for indictment.

1. Filing of a Complaint

A complaint is the written statement provided to the court accusing a specific person of committing a violation of the criminal code. Complaints include essential facts that constitute the offense(s). If a complaint alleges a crime in the first, second, third, or fourth degree, it is considered an indictable complaint. Complaints may be lodged by any citizen, but are usually made by law enforcement. The Court requires that the Municipal Court Administrator (MCA) or Deputy Municipal Court Administrator (DMCA), accept for filing complaints made by any person. The Rules also require that the complaint be made upon oath or by certification before a judge or other person, such as a Municipal Court Administrator, authorized by N.J.S.A. 2B:12-21 to take complaints.

Defendants may be arrested pursuant to a pre-existing complaint-warrant that was previously issued by the court. If a complaint-warrant does not exist, and police believe there is probable cause that a defendant committed an offense, police may nevertheless arrest the defendant and take him or her into custody to either issue a summons or request a complaint-warrant from the court. R. 3:4-1(a). In some circumstances, the prosecutor's office or the Attorney General's Office may proceed against a defendant on a direct indictment. This means that the prosecutor or deputy attorney general obtained an indictment from the Grand Jury without the defendant first being charged on a complaint. In this circumstance, a summons or warrant must be requested by law enforcement in the Judiciary's computerized system for issuance by the Assignment Judge, designated Superior Court judge, or in their absence, any other Superior Court judge in the Law Division in that county in accordance with R. 3:3-1. R. 3:7-8. This type of complaint is typically referred to as a "summons on indictment" or "warrant on indictment."

R. 3:2-1(b) states "[w]here a [c]omplaint-[s]ummons (CDR-1) or [c]omplaint-[w]arrant (CDR-2) alleges an indictable offense, the complaint shall be forwarded through the Judiciary's computerized system used to generate complaints to the prosecutor and the criminal division manager's office immediately upon issuance." The computerized system used to generate complaints is called the "electronic Court Disposition Reporting" (eCDR). This electronic application is used to record the official complaint in the court of original jurisdiction for all indictable and disorderly persons offenses.

If the Judiciary's computerized system is not available, complaints shall be forwarded pursuant to procedures prescribed by the Administrative Director of the Courts. Ibid. This involves manually filling out a paper complaint and sending to the appropriate court personnel for filing. For a complaint-warrant, investigative reports shall be forwarded by law enforcement to the prosecutor immediately upon issuance of the complaint. For a

complaint-summons, all available investigative reports shall be forwarded by law enforcement to the prosecutor within 48 hours.

2. The Issuance of a Complaint-Summons or Complaint-Warrant

Defendants arrested without a pre-existing warrant must be taken to a police station where either a complaint-summons or complaint-warrant shall be immediately prepared by law enforcement. R. 3:4-1(a)(1). Most defendants who are arrested must be fingerprinted using LiveScan¹ prior to a complaint being filed. Some defendants may not be fingerprinted because (1) the defendant is not in police custody at the time the police file for the complaint-warrant or complaint-summons, or (2) the defendant's charges do not fall within the list of charges that require immediate fingerprinting of the defendant upon arrest. See N.J.S.A. 53:1-15. For defendants who are fingerprinted upon arrest using LiveScan, the electronic fingerprint record must be linked to the complaint in eCDR to run the preliminary risk assessment. The preliminary risk assessment uses the defendant's criminal record stored in the Computerized Criminal History (CCH), commonly referred to as the rap sheet, to make an initial assessment of the defendant's risk on pretrial release for law enforcement and the judge or duly authorized judicial officer (Municipal Court Administrator or Deputy Municipal Court Administrator) determining whether to issue a complaint-summons or a complaint-warrant. Additional information about the defendant is entered by the officer into eCDR which is then sent to the State Police Computerized Criminal History (CCH) system.²

If law enforcement prepares a complaint-warrant, then within 12 hours of the defendant's arrest, the matter must be presented to a judge or judicial officer who has the authority to determine whether a warrant or summons will issue. R. 3:4-1(a)(2). If a complaint-warrant issues, the defendant must be remanded to the county jail pending a determination of conditions of pretrial release or a determination regarding pretrial detention if a motion had been filed by the prosecutor. N.J.S.A. 2A:162-16(a). If a complaint-summons was prepared, police may serve the summons and the defendant is immediately released on his or her own recognizance (ROR).³ N.J.S.A. 2A:162-16(d)(1).

¹ A proprietary computer application used by law enforcement agencies and private facilities that allows for electronic fingerprinting and storage without the need for the more traditional method of ink and paper. Through a federal grant, the New Jersey State Police has provided LiveScan equipment to all municipalities. The municipalities are required to maintain and upkeep the system to ensure that it is properly functioning.

² Complaint forms (CDRs) are forwarded to the New Jersey State Police via an electronic interface and are used to create an offender's computerized criminal history commonly referred to as their "rap sheet".

³ ROR release consists of the most minimal conditions available. Defendants released ROR are not ordered to report for pretrial monitoring appointments. However, these defendants must nevertheless: (1) appear for court scheduled events; (2) not commit

Except where a law enforcement officer determined that a complaint-summons may issue without presentment to a judge or judicial officer pursuant to R. 3:3-1(b)(2) and the Attorney General Guidelines, a judicial officer (Municipal Court Judge or a duly authorized Municipal Court Administrator or Deputy Municipal Court Administrator) must determine whether there are sufficient facts to support a finding of probable cause that the defendant committed an offense. Probable cause is defined as a “well-grounded suspicion that a crime has been or is being committed. Probable cause exists where the facts and circumstances...are sufficient in themselves to warrant a person of reasonable caution that an offense has been or is being committed.” State v. Moore, 181 N.J. 40, 46 (2004). If the judge or judicial officer finds probable cause, the court must then decide whether to issue the complaint on a summons or a warrant pursuant to R. 3:3-1; R. 7:2-2.

If, after reviewing a complaint, a duly authorized judicial officer (Municipal Court Administrator or Deputy Municipal Court Administrator) finds that there is no probable cause to believe that an offense was committed or that the defendant committed it, or that the applicable statutory time limitation to issue the arrest warrant or summons has expired, the judicial officer’s determination to not issue a warrant or summons shall be reviewed by the Municipal Court Judge. R. 3:3-1(h); R. 7:2-2(a). A judicial finding of no probable cause shall dismiss the complaint.

a. The Summons Versus Warrant Decision

A complaint-summons (or CDR-1) is typically issued and served on defendants who have allegedly committed low level offenses where law enforcement or a judge or a duly authorized judicial officer making the warrant/summons decision determines that the defendant is not an apparent risk. See R. 3:3-1, generally. Defendants who are served a complaint on a summons are released, and are not taken to the county jail to await a pretrial release decision. N.J.S.A. 2A:162-16(d)(1). The complaint-summons document nevertheless compels the defendant to appear in court on a specific date. In low level cases, law enforcement, as authorized by the Attorney General Guidelines, are able to issue a complaint-summons and release the defendant without contacting a judge or judicial officer. In all other cases, law enforcement must contact a judicial officer who will make the warrant/summons decision as authorized by R. 3:3-1.

If the defendant who was issued a summons fails to appear for a court appearance, the court may issue a bench warrant for the defendant’s arrest. If bail was not set at the time the bench warrant was issued, after the defendant is arrested on the bench warrant, the court must either release the defendant ROR or set bail within 12 hours of the defendant’s arrest. The Speedy Trial timeframes contained within the Criminal Justice Reform Law do not apply to these defendants.

further offenses while on pretrial release; and (3) not tamper with the witness(es) that may testify at trial, threaten the victim(s) or obstruct the criminal justice process.

A complaint-warrant (or CDR-2) is a document that orders the police to arrest an individual and bring him or her before the court that issued the warrant. A law enforcement officer shall not apply for a complaint-warrant except in accordance with guidelines⁴ established by the Attorney General. N.J.S.A. 2A:162-16(c). Further, a court shall not issue a complaint-warrant except as authorized by R. 3:3-1. N.J.S.A. 2A:162-16c.

If a defendant is arrested on a complaint-warrant, he or she shall be remanded to the county jail pending a determination of the conditions of pretrial release, or a determination regarding pretrial detention if the prosecutor has filed a detention motion. R. 3:4-1(b). The first appearance shall occur within 48 hours of a defendant's commitment to the county jail, and shall be before a judge with authority to set conditions of release for the offenses charged. R. 3:4-2(a)(1). In order for a court to order the pretrial detention of a defendant, the prosecutor must make a motion for detention and the court must hold a pretrial detention hearing. R. 3:4A(a); N.J.S.A. 2A:162-19(a).

3. First Appearance and Setting Conditions of Pretrial Release

The first appearance is the defendant's first appearance before a judge. This proceeding's technical name is "the first appearance after the filing of a complaint." This is commonly confused with an arraignment, which will be addressed below.

R. 3:4-2 requires that a defendant's first appearance for indictable offenses shall occur at a centralized location and before a judge designated by the Chief Justice. Typically, these events will occur at the Superior Court or jail of the county in which the matter originated, before a Municipal or Superior Court judge. The first appearance for defendants arrested on a complaint-warrant who are in custody must occur within 48 hours of a defendant's commitment to the county jail. The first appearance for defendants who are released on a complaint-summons shall be held no more than 60 days after the issuance of the complaint-summons or the defendant's arrest. If a defendant is unrepresented at the first appearance, the court is authorized to assign the Office of the Public Defender to represent the defendant for the purpose of the first appearance. Id. Unless otherwise ordered, a defendant who is represented by counsel and who is not incarcerated may waive the first appearance. Id.

R. 3:4-2 provides additional requirements for the first appearance. In all cases, at the first appearance the judge shall do the following:

1. Inform the defendant of the charges pending against him or her and provide the defendant with a copy of the charges;

⁴ Attorney General Directive are available online at
http://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2016-6_v3-0.pdf.

2. Inform the defendant of his or her right to remain silent and further inform the defendant that any statement made may be used against him or her;
3. Inform the defendant of his or her right to counsel or, if indigent, the right to have counsel provided without cost; **and**,
4. Assign counsel, if the defendant is indigent and entitled by law to the appointment of counsel, and does not affirmatively, and with understanding, waive the right to counsel.

For defendants charged with an indictable offense, the judge must also do the following at the defendant's first appearance:

1. Ask the defendant specifically whether he or she wants counsel and record the defendant's answer on the complaint;
2. Provide the defendant who asserts indigence with an application for public defender services (commonly referred to as the 5A form);
3. Inform the defendant of the existence of the pretrial intervention (PTI) program and how to apply for admission into the program;
4. Inform the defendant of the Drug Court program and advise the defendant where and how to apply to same;
5. Inform the defendant of his or her right to a hearing to determine whether there is sufficient probable cause to charge the defendant with the crime alleged;
6. Inform the defendant of his or her right to an indictment by the grand jury;
7. Inform the defendant of his or her right to a jury trial;
8. Set conditions of pretrial release, when appropriate as provided in Rule 3:26;
9. Schedule a pre-indictment disposition conference to occur no later than 45 days after the date of the first appearance; and
10. In those cases in which the prosecutor has filed a motion for an order of pretrial detention pursuant to R. 3:4A, set the date and time for the required hearing and inform the defendant of his or her right to seek a continuance of such hearing.

Although not required by R. 3:4-2, the first appearance is also when the court typically informs defendants who are military veterans of the Veterans Assistance Program (VAP) and how to participate in the program.

In addition, the court must set conditions of pretrial release for eligible defendants arrested on a complaint-warrant at the first appearance unless the prosecutor has filed a motion for pretrial detention. In setting conditions, the court must use the least restrictive conditions to assure the defendant's appearance in court, protect the safety of the community or any other person, and prevent obstruction of the criminal justice process.⁵ See N.J. Const. art. I, ¶ 11 and N.J.S.A. 2A:162-15 et seq.

Before making a release decision, the court must consider the results of the Public Safety Assessment (PSA), the recommendation on conditions of pretrial release, all the circumstances of the case, and any other relevant information provided by the prosecutor and defense counsel. N.J.S.A. 2A:162-16(b)(2). If the defendant is released, the court is required to notify the defendant of all of the conditions of release and the penalties and consequences of violating them. N.J.S.A. 2A:162-23(a). The Criminal Justice Reform Act requires the court to consider setting the least restrictive conditions, with a preference toward non-monetary conditions, in hierarchical order to assure the court that releasing the defendant will meet the goals of the CJRA:

1. Released on his or her own recognizance,
2. Released on non-monetary condition(s),
3. Released on monetary bail, or
4. Released on a combination of non-monetary conditions and monetary bail

A judge must find that the first option is not appropriate before moving on to the second option and so on. N.J.S.A. 2A:162-17. This process occurs at a pretrial release hearing, which is typically a part of the centralized first appearance event. R. 3:4-2.

A list of the non-monetary conditions available to the court in making a pretrial release decision may be found under N.J.S.A. 2A:162-17(b).

a. The Public Safety Assessment (PSA)

Prior to the court making a pretrial release decision, Pretrial Services staff are responsible for generating the Public Safety Assessment (PSA) that the court will consider at the pretrial release decision stage. The PSA was developed using empirical evidence and validated using New Jersey data. The PSA is designed to objectively assess the risk of a defendant's failure to appear to court scheduled events, or commit new offenses or new violent offenses while on pretrial release. It is race and gender neutral, and only relies on objective factors, such as the defendant's age, criminal history and court data, to make its assessment.

Collecting the information and generating the risk assessment is a fully automated process. When an eligible defendant is arrested on a complaint-warrant, and committed to the county jail, the defendant's case is generated in eCourts and placed in the Pretrial

⁵ This concept is referred to generally as "the goals" of the Criminal Justice Reform Act ("CJRA"). N.J.S.A. 2A:162-15.

Services Program's (PSP) worklist. A PSP staff member enters the case and selects the option to generate the PSA. The application then performs a query using data-matching software to search through millions of data entries stored in the Judiciary's electronic databases (i.e., PROMIS/Gavel, ACS, CCIS, FACTS). Once identified, the application analyzes the data to calculate the risk scores based on the presence of one or more of nine risk factors, such as the presence of prior convictions, prior failures to appear or prior sentences to incarceration, among others.

PSP staff audit the PSA to assure the quality and accuracy of the risk assessment. Sometimes, this requires thoroughly researching the underlying data that was used to generate the PSA. Once completed, Pretrial Services staff analyze the defendant's recommended level of pretrial release, and the circumstances of the offense, to develop a proposed form of order for the court to consider in determining the defendant's pretrial release decision. Any discrepancies identified by the parties should be communicated to the court or PSP staff for remedial review.

b. The Decision-Making Framework and the Proposed Form of Order

Although the release recommendation appears at the top of the PSA, the PSA does not generate release recommendations *per se*. Rather, generating a recommendation of release depends on a separate instrument, the Decision-Making Framework (DMF), to analyze the PSA's scores, and other relevant case information. The PSA scores are translated onto the DMF's release recommendation matrix. This provides the preliminary recommendation of release. The preliminary recommendation of release may be elevated based on other relevant circumstances, including the nature of the offense charged, whether the defendant's history and current charge shows a predisposition toward violence, or whether the defendant was subject to frequent rearrests while on pretrial release. This could result in elevating the defendant's release recommendation one level, two levels, or to the highest level, "no release recommended," depending on those circumstances.

The DMF only provides whether release is recommended, and if so, at what pretrial monitoring level (PML). The DMF recommendations are broken into six separate recommendation levels: ROR (no conditions); PML 1 (monthly reporting by phone); PML 2 (biweekly alternating reporting by phone and in person); PML 3 (weekly alternating reporting by phone and in person); PML 3+ (home electronic monitoring supervision); and finally, no release recommended for high risk defendants. The recommendation at the top of the PSA does not include specific conditions of release.

Once the PSA and DMF recommendations have been generated, PSP staff can select among the statutorily authorized conditions and submit a proposed pretrial release order to the court. This proposed order is the complete PSP recommendation of release.

4. Bail

While bail will be applicable in only a limited number of circumstances, it is still important to understand the bail process. Defendants who were arrested prior to January 1, 2017 may be released on their own recognizance or on bail, and bail hearings may need to be conducted during the pendency of those cases. Additionally, bail will be available, regardless of when the defendant was arrested, in cases in which the most serious charge(s) are petty disorderly persons offenses, or for defendants who were issued a complaint-summons for any offense who later fail to appear for court and have a bench warrant issued for their arrest. Finally, although the Criminal Justice Reform Act created a preference for setting non-monetary conditions on eligible defendants, courts may still assign bail if it is deemed appropriate. N.J.S.A. 2A:162-17(c)(1).

Bail is the money or property deposited with the court to secure the release of persons held in custody awaiting the resolution of the charges against them. The sole purpose of bail is to ensure that a defendant appears for all court events, both pretrial and trial. State v. Johnson, 61 N.J. 351, 364 (1972); State v. Fann, 239 N.J. Super. 507 (Law Div. 1990). Bail is not intended to function as a way to “protect the community or to frighten or punish the defendant.” State v. Steele, 430 N.J. Super. 24, 35-37 (App. Div. 2013).

a. Types of Bail

When bail is set, it can be satisfied in one or more of the following ways:

Cash Bail

To meet the requirements of a cash bail, the defendant or surety must deposit a certain amount of money with the court. A surety is a person, other than the defendant, who is posting bail at the set bail amount in order to secure the release of the defendant from custody. There are two types of cash bail: (1) full cash and (2) ten percent cash.

Full Cash

If a court assigns full cash bail, the entire bail amount must be posted in cash. Full cash bail must be posted when a defendant is charged with certain crimes of the first or second degree as enumerated under N.J.S.A. 2A:162-12(a), and the defendant's criminal history indicates any of the following:

1. Two other indictable cases pending at the time of the arrest; or
2. Two prior convictions for a first or second degree crime or a violation of N.J.S.A. 2C:35-7 or any combination thereof; or
3. One prior conviction for murder, aggravated manslaughter, aggravated sexual assault, kidnapping or bail jumping; or
4. Defendant was on parole at the time of the arrest, or

5. Defendant violated a temporary or permanent restraining order and (a) was charged with the commission of a domestic violence offense or (b) has at least one prior conviction of a domestic violence offense against the same victim or subject of the restraining order.

Ten Percent Cash Bail

When bail is set at "cash with a ten percent option," ten percent of the bail total must be posted in cash. The remaining 90 percent does not have to be paid unless the defendant fails to appear for a required court date and the court issues an order that the rest of the bail amount must be paid.

Unless a defendant meets the conditions of a full cash bail or is charged with a crime carrying bail restrictions, the Court Rules presume that all bail payments can be made by depositing ten percent of the total cash bail amount. This presumption is overcome if: (1) the defendant's charges are in the first or second degree as set forth in N.J.S.A. 2A:162-12 and/or (2) the court's bail order specifies otherwise.

Corporate Surety Bonds

A defendant may hire a bail bondsman to pay his or her bail. A bail bondsman is an agent who represents an insurance company that has been approved by the New Jersey Department of Banking and Insurance. The bail bondsman must have a power of attorney from the insurance company to act on its behalf. If bail is posted by a corporate surety a contract is formed between the bondsman and the court wherein the bondsman agrees to be responsible for the full amount of bail should the defendant fail to appear as required by the court.

Property Bonds

A property bond is when a defendant or surety posts real property (e.g., a house) to satisfy the bail. In order to post real property, the defendant or surety must provide the court with the following information pursuant to N.J.S.A. 2A:162-12:

1. A legal description of the property;
2. A description of each encumbrance on the real property;
3. The market value of the unencumbered equity owned by the affiant as determined in a full appraisal conducted by an appraiser licensed by the State of New Jersey; and
4. A statement that the affiant is the sole owner of the unencumbered equity.

If real property is going to be posted to satisfy bail for a crime with bail restrictions as identified in N.J.S.A. 2A:162-12(a), the property must be located in New Jersey with an unencumbered equity equal to the amount of the bail undertaken plus \$20,000.

Release on Own Recognizance (ROR)

If the charges against a defendant do not prompt bail restrictions, a judge is permitted to release the defendant on his or her own recognizance. Here, the release of the defendant is conditioned only upon the defendant's promise to appear when the court so requires. The defendant must therefore sign a recognizance acknowledging that he or she will appear as required and will further abide by any conditions imposed by the court.

b. Review of Initial Bail Set

Informal Review

Defendants who are unable to post bail are entitled to an initial bail review by a Superior Court judge no later than the next ordinary business day. This provides the defendant with an expedient method of having his or her bail reviewed to determine the fairness of the bail as it relates to the factors used to set the bail amount. In most counties, the Superior Court judge reviews the bail shortly after the defendant reaches the county jail by reviewing the complaint, usually in chambers. In some instances, this review includes a Criminal Division staff member who has interviewed the offender in jail. In some counties, an assistant prosecutor is present during the bail review. Each vicinage may have a different protocol for the initial bail review, but each vicinage must have a process in place to ensure that the bail is reviewed quickly to prevent unnecessary detention.

Formal Review

Formally, the Court Rules only provide for a bail review via motion. R. 3:26-2(d). Motions to modify bail must be filed with criminal case management and are required to be heard by a judge no later than seven days after filing. In order to alleviate jail overcrowding and reduce the administrative burden of filing motions, most vicinages have done away with these formal mandates. Instead, these counties automatically schedule a review for every new defendant that remains in custody and is unable to post bail or they allow for a less formal bail motion. Nevertheless, any subsequent request to review a defendant's bail must conform to the formal procedure for filing motions.

5. Pretrial Detention Hearing

Pretrial release may be denied to a person if the court finds by clear and convincing evidence that no combination of conditions of release will reasonably assure the defendant's appearance in court when required, the safety of another person or the community, or that the defendant will not obstruct or attempt to obstruct the criminal justice process. N.J.S.A. 2A:162-18. The court cannot order a defendant detained unless the prosecutor has made a motion for pretrial detention and it has first considered each of the various types of pretrial release at a pretrial detention hearing. Ibid.

A prosecutor may file a motion at any time seeking the pretrial detention of a defendant for whom a complaint-warrant or complaint-warrant on indictment is issued for an initial charge involving an indictable offense, or a disorderly persons offense involving domestic violence. N.J.S.A. 2A:162-19. See also R. 3:4A(a). Only a Superior Court judge has authority to hear and determine a motion for pretrial detention. R. 3:4A(b)(1).

If a prosecutor files a motion for pretrial detention, but then withdraws it prior to the hearing, a Superior Court judge must set conditions of release for the defendant in accordance with the hierarchy contained in N.J.S.A. 2A:162-17.

A pretrial detention hearing must be held no later than the defendant's first appearance, unless the prosecutor files the motion at or after the defendant's first appearance. R. 3:4A. In that event, the hearing must be held within three working days of the date of the prosecutor's motion, excluding weekends or legal holidays. The defendant or the prosecutor may seek a continuance of the hearing date. Except for good cause, a continuance on motion of the defendant may not exceed five working days, and a continuance on motion of the prosecutor may not exceed three working days. The Superior Court judge in making the pretrial detention decision may take into account: (1) the nature and circumstances of the offense; (2) the weight of the evidence; (3) the history and characteristics of the defendant; (4) the danger to another person or the community; (5) the risk of obstructing or attempting to obstruct the criminal justice process. N.J.S.A. 2A:162-20.

At the detention hearing the defendant has the right to be represented by counsel and, if indigent, to have counsel appointed. The defendant shall be provided discovery pursuant to Rule 3:4-2(c)(1)(B). R. 3:4A(b)(2). The defendant also has the right to testify, to present witnesses, to cross-examine witnesses who appear at the hearing and to present information by proffer or otherwise. R. 3:4A(b)(2).

If the defendant is detained, the court will use one of the standard orders to be used in pretrial detention hearings promulgated by Administrative Directive. The court must provide written findings of fact and a statement of reasons for ordering detention, and direct that the defendant be afforded reasonable opportunity for consultation with counsel. N.J.S.A. 2A:162-21.

Defendants who are subject to pretrial detention as ordered by a court through a detention order, or a release order setting bail, are protected under the speedy trial provisions of the CJRA. See N.J.S.A. 2A:162-22 (defendant shall not remain detained longer than 90 days from commitment to indictment; 180 days from indictment to the commencement of trial, and not longer than two years from the order resulting in defendant's detention to the commencement of trial).

A pretrial detention hearing may be reopened at any time before trial if the court finds that information exists that was not known by the prosecutor or defendant at the time of the hearing and that information has a material bearing on the issue of whether there are conditions of release that will reasonably assure the defendant's appearance in

court when required, the protection of the safety of any other person or the community, or that the defendant will not obstruct or attempt to obstruct the criminal justice process. R. 3:4A(b)(3).

A probable cause hearing must be held unless the defendant expressly waives it. See R. 3:4-3. The need for a probable cause hearing is eliminated if the case is referred to the grand jury and the grand jury returns an indictment or No Bill before the probable cause hearing.

In addition to the availability of pretrial detention at the start of the criminal case, if a defendant is released and subsequently violates the terms of pretrial release as defined under the CJRA, the prosecutor may submit a motion to revoke the defendant's release. N.J.S.A. 2A:162-24. The filing of a motion to revoke release has the same effect as filing a pretrial detention motion. The release revocation motion process and procedure, in fact, mirrors the process and procedure of a detention motion, except that in addition to the court finding by clear and convincing evidence that the defendant will not meet the goals of the CJRA, the court must also find that the defendant (1) violated the conditions of a pretrial release order; (2) violated the conditions on a Temporary Restraining Order or Final Restraining Order; or (3) there is probable cause to believe the defendant committed an offense while on pretrial release. Ibid.

6. Pre-indictment Disposition Conference

It is important to assess cases early in the criminal process to promote the speedy resolution of cases and effectively manage court resources. With that goal in mind, R. 3:4-6 requires that the court conduct a Pre-indictment Disposition Conference for the purpose of discussing and/or finalizing any pre-indictment dispositions. The conference must be scheduled within 45 days of the first appearance and shall be conducted on the record, in open court in the presence of the prosecutor, the defendant, and defense counsel.

Following the filing of a complaint and the first court appearance, the prosecutor's office in each vicinage determines whether cases have merit and sufficient evidence to pursue a criminal complaint and conviction. In most vicinages, the Prosecutor Office's Case Screening Unit reviews police reports and interviews victims and witnesses to determine if the original charges will be prosecuted. If there is insufficient evidence, the charges are dismissed or downgraded to a disorderly persons offense and remanded to municipal court for a hearing.

If the defendant's case is not resolved by way of a dismissal or downgrade, the Pre-indictment Disposition Conference allows the State and defendant to attempt to settle the case by negotiating a pre-indictment disposition. If successful, this results in the defendant pleading to an accusation. If no disposition can be reached at the Pre-indictment Disposition Conference, the case will proceed to grand jury. The pre-indictment conference is often used as a vehicle for early diversion into the Pretrial Intervention Program (PTI). PTI diverts selected defendants from prosecution, with the

consent of the prosecutor and court, so that those eligible can receive early rehabilitative services or supervision and earn dismissal of their charges upon successful completion of the program. In addition to considering whether the defendant is a candidate for PTI, the pre-indictment event also offers the defendant the opportunity to be screened to determine his or her eligibility to apply to Drug Court.

7. Grand Jury

If a criminal case has not been downgraded, diverted, dismissed, or pled out, the prosecutor will seek an indictment by presenting the case to a grand jury. Under the New Jersey Constitution, there is a guaranteed right to an indictment by a grand jury. The primary function of this body is to hear evidence against people accused of crimes and to make a determination, based on the evidence presented, as to whether the persons so charged should be required to stand trial for those accusations.

Starting on January 1, 2017, the Criminal Justice Reform laws implemented speedy trial deadlines. Eligible defendants arrested on a complaint warrant who are subject to pretrial detention as ordered by a court pursuant to R. 3:4A or who are detained in jail due to the inability to post the monetary bail imposed by the court pursuant to N.J.S.A. 2A:162-17 must be indicted within 90 days, not counting excludable time. N.J.S.A. 2A:162-22.

Each county is required to maintain a grand jury at all times. Each county's grand jury not only has the ability to indict crimes committed in its county, but also crimes committed throughout the state of New Jersey. While the grand jury has the authority to investigate criminal activities on its own initiative, almost all matters before the grand jury for consideration are presented by the Prosecutor's Office and were previously the subject of a complaint. The grand jury may, however, decide to charge the defendant with a less serious offense to be heard in municipal court. If the matter is downgraded and remanded to municipal court, the defendant must appear in municipal court to face the disorderly persons or petty disorderly persons charge.

A grand jury consists of no more than 23 members of the general public, selected randomly. The Assignment Judge appoints one juror to be the foreperson and another to be the deputy foreperson. If 12 or more members of the grand jury find that charges are warranted, the panel returns an indictment, also called a "True Bill." If the grand jury determines the charges cannot be supported, it returns a "No Bill." Should a grand jury return a "No Bill," and the defendant is in custody, the Assignment Judge is required to order the release of the defendant unless there are other charges pending for which the defendant is detained. The deliberations of the grand jury are kept secret, and neither the defendant nor the defense attorney is permitted to attend the proceedings, unless the defendant requests to testify before the grand jurors.

B. INDICTMENT AND POST-INDICTMENT PROCEEDINGS

1. Indictment

An indictment is a written statement of the essential facts constituting the crime charged. The Court Rules require that the indictment be signed by the prosecuting attorney and endorsed by the foreperson of the grand jury as a True Bill. The indictment must also state the official statutory citation for the crime charged. See R. 3:7-3. When the grand jury determines there are sufficient facts to support the return of a True Bill, the indictment is returned (filed) in open court to the Assignment Judge or, in the Assignment Judge's absence, to any Superior Court judge assigned to the Law Division in the county. With the Assignment Judge's permission, the indictment may be returned by the foreperson or deputy foreperson only, rather than the entire grand jury panel. R. 3:6-8(a). Once returned, the judge who receives the indictment can order that the indictment be kept secret, i.e. sealed, until the defendant is arrested or the indictment is ordered unsealed by the court. When an indictment is sealed, it is usually at the request of the prosecutor for various reasons including not wanting to compromise an ongoing investigation or not wanting a defendant to flee the jurisdiction of the court before the defendant can be arrested.

2. Arraignment

An arraignment is the formal notification of the charges against the defendant. At this stage of the proceedings, a Superior Court Judge will advise the defendant of the charges against him/her and the defendant shall enter a plea of guilty or not guilty as to the charges. If the defendant pleads not guilty, the parties shall inform the court on the status of plea negotiations and such other matters discussed by the parties. The parties shall also inform the court of any possible motions that may be filed pursuant to R. 3:10-2(a). Additionally, at the arraignment, the judge shall confirm that discovery has either been received or requested in accordance with the court rules. Any plea offer by the State must be in writing. Defendants may also apply for Pretrial Intervention (PTI) or other court diversion programs at this time. If the defendant pleads guilty, he or she is questioned by the Superior Court Judge to determine if the defendant understands the plea and is knowingly and voluntarily entering into the plea.

The arraignment shall occur within 14 days of the return or unsealing of the indictment. The criminal division manager's office must notify the defendant in writing of the date, time and location to appear for arraignment. The criminal division manager's office must also determine if the defendant has counsel and, if so, if counsel has formally filed a notice of appearance in accordance with R. 3:8-1. If the defendant is not represented, the criminal division manager's office shall ascertain whether the defendant has completed an application form for Public Defender services and the status of that application. R. 3:9-1. If the defendant is unrepresented at arraignment, upon completion of an application for services of the Public Defender, the court may assign the Office of the Public Defender to represent the defendant for purposes of the arraignment. Id.

If a guilty plea is entered, the court will order a presentence investigation (PSI). The presentence investigation and the report generated thereafter assist the judge with sentencing decisions. This report provides the judge and counsel with useful information including criminal history, background information, employment history, family makeup, and jail credits.

3. Disposition (Status) Conferences

At the conclusion of the arraignment, if the defendant has entered a plea of not guilty to the charges and if no plea agreement is reached at that time, the court schedules the case for a disposition conference. The purpose of this conference is to assist counsel and the court in addressing any outstanding issues or concerns and potentially helping to determine the likely outcome of a case. At these conferences, the parties will discuss issues related to outstanding discovery, potential or outstanding motions, and plea negotiations. Effective May 20, 2016, cases will be limited to two status conferences, with the option for a discretionary third conference. R. 3:9-1(e). The three conferences shall be called the initial case disposition conference (ICDC), the final case disposition conference (FCDC), and the discretionary case disposition conference (DCDC). Id. Prior to the rule change, cases could have any number of status conferences, depending on the complexity and nature of the case.

Prior to each conference, the prosecutor and the defense attorney meet and discuss the case, including any plea offer, any outstanding or anticipated motions, and any other matter as instructed by the court, and shall report thereon at the conference. Any plea offer to be made by the prosecutor shall be in writing and forwarded to the defendant's attorney. R. 3:9-1(d) and (e).

Absent good cause, all motions must be filed along with the supporting brief no later than the ICDC and the court shall set a briefing schedule and schedule a hearing date for any motions prior to or at the ICDC. R. 3:9-1(b)(3) and (e). Prior to the ICDC, the attorney for the defendant and the prosecutor must discuss the case, including potential plea offers and discovery issues and report on those discussions at the ICDC. Ibid. at (e). At the conclusion of the status conference the court shall schedule any pretrial hearings, schedule another status conference (in accordance with the rules), or schedule the case for trial. Ibid.

At the conclusion of either the Final Case Disposition Conference or the granted Discretionary Case Disposition Conference, if the court concludes that discovery is complete and that another conference will not assist in moving the case toward a disposition, the court may, in its discretion, schedule a pretrial conference, set a trial date, or schedule any necessary pretrial hearings

4. Motions

A motion is a written application requesting that the court take some specific action, e.g., to suppress unlawfully obtained evidence. The motion is normally accompanied by a brief, which is a document that sets forth the parties' factual and legal arguments in an effort to persuade the judge to grant, or deny, the requested relief. Attorneys may file affidavits with motions to support the factual basis. An affidavit is a voluntary declaration of facts written down and sworn to by the individual attesting to those facts before a person authorized to administer oaths. Unless otherwise instructed by the court, at the time of the arraignment, counsel should advise the court of any motions they are likely to file. Absent good cause, motions must be filed with the court by the ICDC. Unless the opposing party bears the burden of proof, the motion must also be accompanied by a brief when filed. The court should set a briefing and hearing schedule before or at the ICDC. In practice, motions should be heard and determined prior to the pretrial conference, or upon request of the movant, the court may order the motion be reserved for the time of trial. Certain motions are heard at the conclusion of the State's case in chief or at the conclusion of the trial (e.g., motion for judgment of acquittal after the jury's verdict). To make the pretrial conference more productive, the court should dispose of all motions that can be disposed of prior to that event.

5. Pretrial Conference

The pretrial conference is the last proceeding before a matter goes to trial, excluding any motions reserved for the start of trial. At this conference the attorneys and judge discuss outstanding discovery issues and attempt to narrow the issues that will be tried. Pretrial conferences are held when (1) there are no motions pending before the court, (2) all reasonable attempts to dispose of the case have been exhausted, and (3) it appears that further negotiations or additional status conferences would not help the case progress towards a disposition or resolution.

At the pretrial conference, the court must advise the defendant that ordinarily a negotiated plea may not be accepted after the pretrial conference, and a trial date has been set. In order for the defendant to enter a negotiated plea after the pretrial conference, the court will need the approval of the Criminal Presiding Judge. In addition, the court shall address the defendant to determine that the defendant understands the State's final plea offer, the sentencing exposure the defendant will face if convicted, and that the defendant has a right to reject the plea offer and go to trial at which the State must prove the case beyond a reasonable doubt.

If the case is not otherwise disposed of, a pretrial memorandum shall be prepared. The pretrial memorandum is reviewed on the record with counsel and the defendant present and signed by the judge, who in consultation with counsel, shall fix the trial date. The court shall also inform the defendant of the right to be present at trial, the trial date, and the consequences of a failure to appear for trial, including the possibility that the trial will take place in defendant's absence.

6. Trial

Starting on January 1, 2017, the Criminal Justice Reform laws implemented speedy trial deadlines. Eligible defendants arrested on a complaint warrant who are subject to pretrial detention as ordered by a court pursuant to R. 3:4A or who are detained in jail due to the inability to post the monetary bail imposed by the court pursuant to N.J.S.A. 2A:162-17 must brought to trial within 180 days of indictment, not counting excludable time. N.J.S.A. 2A:162-22.

If the eligible defendant is not brought to trial by the deadline, the eligible defendant shall be released from jail, unless, on motion of the prosecutor, the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the defendant's release and that the failure to commence trial within the time requirement was not due to unreasonable delay by the prosecutor. If the judge grants the State's motion to continue to detain the defendant, he or she may allocate an additional period of time in which to bring the case to trial. If the court denies the motion, the defendant is released on conditions. Id.

However, an eligible defendant shall be released from jail pursuant to N.J.S.A. 2A:162-17 after a release hearing if, two years after the court's issuance of the pretrial detention order for the eligible defendant, excluding any delays attributable to the eligible defendant, the prosecutor is not ready to proceed to voir dire or to opening argument, or to the hearing of any motions that had been reserved for the time of trial. Id.

Right to Trial by Jury

Should a defendant decide to contest guilt, the defendant has a Constitutional right to a trial by jury, as provided by both the United States and New Jersey Constitutions.⁶ The right to a jury trial does not extend to all cases; it applies to criminal acts where the penalty for the offense is more than six months of incarceration.

With the approval of the court, a defendant may waive his/her right to a jury trial. Before the court can approve a waiver of a jury trial it must make the following findings:

1. The defendant voluntarily, knowingly, and competently waived the right to the jury trial;
2. The defendant's waiver is in good faith and not for an otherwise impermissible procedural advantage; and
3. The judge must weigh relevant factors to determine whether they mitigate a trial by jury.⁷

⁶ U.S. Const. art. III, 2; U.S. Const. Amend. VI; N.J. Const. art. I, 9.

⁷ The other relevant factors include the gravity of the crime, the anticipated duration and complexity of the State's presentation of the evidence, the amenability of the issues to jury resolution, the existence of a highly charged emotional atmosphere, the present of particularly technical matters that are interwoven with fact, and the anticipated need for

The judge must state, for the record, the reasons for either granting or denying the defendant's request to waive a jury trial. State v. Dunne, 124 N.J. 303 (1991).

Selection of a Jury

If the case proceeds to a jury trial, the court will select jurors to hear the case. Jurors are drawn from a merged list of registered voters, licensed drivers, filers of state gross income tax returns, and filers of home state rebate application forms in the county where the case will be tried. Usually, 14 jurors are selected to hear the case. At the end of the trial, two of the 14 jurors are selected as alternates. An alternate may be needed for deliberations if one of the jurors is unable to finish the trial or deliberate. Additional jurors may be selected if the trial is expected to take longer than normal.

The examination of potential jurors is called voir dire, which is French for "to speak the truth." During voir dire the judge has a standard list of questions to ask potential jurors. These questions will assist counsel in selecting members of the jury. Both the prosecutor and the defense counsel may ask additional questions of the jurors to determine if they have any bias or prejudices that may impact their ability to fairly evaluate the case. There are two ways that a juror may be excluded from a case; either for cause or through a preemptory challenge. Excusing a juror for cause requires the court, prosecutor or defense counsel to provide a reason for the exclusion. For example, a juror may be excluded for cause if he/she has personal knowledge of the case. Either the prosecutor or the defense counsel may exercise a preemptory challenge to excuse jurors without a reason. The party exercising the preemptory challenge may have to make a "prima facie" showing that the challenge was not used to discriminate based on race, ethnicity, or sex. The number of peremptory challenges depends on the charge, and if the defendant is tried alone or jointly with other defendants. R. 1:8-3.

Trial

Once a jury has been selected and sworn, all of the jurors and any alternates are considered "impaneled." If there are no pretrial motions, the trial begins with opening statements, first by the prosecutor and then by defense counsel. Once both attorneys have concluded their opening statements, the State begins to present its case-in-chief. The defense may cross-examine the State's witnesses. When the State rests, the defense presents its evidence and witnesses. The State may cross-examine the defense witnesses, if it chooses. Once the defense rests, each side concludes its case with closing arguments. The defense counsel gives the first closing argument and the State follows.

At the conclusion of closing arguments, the judge "charges" the jury. The jury charge provides the jury with the applicable law and requirements for finding the defendant guilty of the charges and the applicable law and requirements for any affirmative

numerous rulings on the admissibility of evidence. 32 N.J. Prac., Criminal Practice and Procedure § 19:3 (2014-2015 edition).

defenses that were argued by the defendant. After the jury charge is given, the jurors move into a private room to deliberate about the case. The jury will then return a verdict of guilty, not guilty or advise the Court that they are hung, that is, they cannot agree on a verdict. In order to return a verdict, the jury must be unanimous. If the jury is unable to arrive at a verdict, the court will declare a mistrial and the defendant may be retried.

7. Sentencing

Pre-Sentence Investigation

After the defendant pleads guilty or is found guilty after a trial, he or she must be sentenced. Before being sentenced the criminal division probation officers conduct a presentence investigation (PSI). During this investigation criminal division probation officers interview the defendant, speak with victims, and obtain a personal and criminal history of the defendant. Once the investigation is complete the probation officer generates a presentence report, which is provided to the judge, prosecutor, and the defendant. The report assists the judge in weighing mitigating and aggravating factors by describing the crime, providing a concise view of the defendant's criminal and juvenile history, financial resources and obligations, family make-up, child support obligations, employment history, medical history, drug use, and psychological assessments, among other things. Judges review these reports to determine the appropriate sentence for the defendant. If the PSI was created following a guilty plea, the terms of the guilty plea will be contained on page 1 of the report. These reports are not part of the public record.

Sentencing

Sentencing of criminal defendants in New Jersey is governed by the New Jersey Code of Criminal Justice Title 2C ("The Code"). The Code defines permissible sentences for defendants who were found guilty or who plead guilty. Title 2C also defines the appropriate sentencing parameters based on the degree of the crime. The following ranges are assigned to the relevant degree of the crime: 1st degree is 10-20 years in New Jersey State Prison⁸, 2nd degree is 5-10 years in New Jersey State Prison, 3rd degree 3-5 years in New Jersey State Prison, and 4th degree is up to 18 months in New Jersey State Prison. A sentence of one year (365 days) or more must be served in a New Jersey State Prison. See N.J.S.A. 2C:43-10a, b. First time offenders who are found guilty or plead guilty to a 3rd or 4th degree offense have a presumption against incarceration and can be sentenced to a period of probation.

Sentencing ranges were placed in the Criminal Code to guide judges' discretion and avoid undue sentencing disparity. Sentencing disparity occurs when two offenders who have similar backgrounds and who committed similar offenses receive dissimilar sentences. A judge may determine the length of sentence within the permissible range by first starting at the middle of the sentence range and then considering the aggravating and mitigating factors to increase or decrease the sentence within the

⁸ Note that the sentences for some 1st degree crimes, such as murder, kidnapping and terrorism, are higher than 10-20 years.

range. Aggravating factors are factors that make the crime more serious while the mitigating factors are factors that mitigate the defendant's actions or the seriousness of the crime. The judge does not just quantitatively compare the number of applicable aggravating and mitigating factors; the relevant factors are qualitatively assessed and assigned appropriate weight in a case-specific balancing process. State v. Fuentes, 217 N.J. 57, 72-73 (2014).

Sentencing Hearing

Under the normal process, after the presentence investigation report is prepared, a sentencing hearing is held. At this hearing the court inquires of the defendant as to whether he or she has any legal cause to show why the sentence should not be pronounced against him or her and whether he or she would like to make a statement and present any information in mitigation of sentence. The defendant can make this statement personally or via counsel. At this hearing, the prosecution and defense make sentencing recommendations to the court. The defendant is also allowed to make a personal plea to the court regarding the sentence. Victims are also permitted to make a statement to the court either in person or via a written statement given to the prosecutor pursuant to N.J.S.A. 52:4B-36-44. The judge then imposes the sentence and states his or her reasons for the sentence on the record including finding mitigating and aggravating factors. If a mitigating or aggravating factor was requested by counsel but the court does not think it applies, he or she must state this on the record.

Victims' Rights

In 1990, New Jersey voters approved a constitutional amendment requiring that victims of crimes be treated with fairness and respect by the criminal justice system. The amendment entitled victims to be present at public judicial proceedings when not sequestered and authorized the Legislature to define rights and remedies for victims of crimes. Thereafter, a number of laws were enacted defining victims' rights. These rights include:

1. Allowing crime victims to submit a written statement about the impact of the crime to the Prosecutor's Office prior to his or her final decision to file charges. The legislation also gave victims the right to make an in-person statement directly to the sentencing court prior to sentencing. N.J.S.A. 52:4B-36, -44.
2. Requiring restitution to crime victims, or, in the case of a homicide, to the nearest relative of the victim, where the victim suffered a loss. N.J.S.A. 2C:43-3; N.J.S.A. 2C:11-3.
3. Giving victims of a crime, or a relative of a murder victim, the right to present testimony, or make a presentation, to the parole board when the offender becomes eligible for parole. N.J.S.A. 52:4B-44
4. Allowing victims of certain crimes to demand that the offender be tested for HIV/AIDS. N.J.S.A. 2C:43-2.2.

5. Requiring community notification that an inmate convicted, or adjudicated delinquent, for a sex offense is to be released from incarceration or is going to relocate into a community. N.J.S.A. 2C:7-6.
6. Requiring the AOC to give advance notice to prosecutors, in certain cases, regarding defendant's appearance before a judicial officer. This legislation then requires the prosecutor to give notice to the victim. N.J.S.A. 2A:12-14.
7. Requiring prosecutors to provide notice to victims of a defendant's escape or release from custody via ISP, commutation, or parole release. N.J.S.A. 52:4B-36.
8. Requires the prosecutor to notify the victim whenever a defendant charged with domestic violence is released from custody. N.J.S.A. 2C:25-26.1
9. Requires the court to tell the defendant the approximate term to be served in custody before parole eligibility. L. 1994, c. 157. See also R. 3:21-4j.

Sentencing Options

A person who is convicted of an offense must be sentenced according to the requirements enumerated in the Code. Below are the possible sentencing options a judge may consider pursuant to N.J.S.A. 2C:43-2b.

1. Suspended sentence. This allows the court to suspend the imposition of the sentence. The judge delays sentencing for a period of time to determine the appropriate sentence. The suspended sentence period cannot exceed the lesser of the maximum term for the offense or five years. N.J.S.A. 2C:45-2a. Judges may not issue a suspended sentence if the defendant was convicted of crimes that require sentencing under the Graves Act, certain controlled dangerous substances offenses, an offense subject to a presumption of incarceration, or a first or second degree crime.
2. Fines and Restitution. Courts may order the defendant to pay fines and/or restitution. Fines are punitive whereas restitution is rehabilitative. Fines require payment for a particular violation while restitution serves as "a compelling reminder of the wrong done and meaningfully contributes to the rehabilitation process."⁹ Fines and restitution may also be ordered in addition to probation or incarceration.
3. Probation. A term of probation permits the defendant to return to the community subject to certain court-ordered conditions, rather than being committed to jail or prison. The period of probation cannot be less than one

⁹ State v. Harris, 70 N.J. 586, 593 (1976).

year or more than five years. N.J.S.A. 2C:45-2a. Probationary conditions may require the defendant to routinely check in with a probation officer over a specified period of time. Other conditions may require the defendant to find gainful employment, to undergo medical or psychiatric treatment (and to remain in a facility for those purposes), to pursue educational or vocational training, to refrain from frequenting certain places or consorting with certain people, or to perform community service. N.J.S.A. 2C:45-1b. There are also specialized caseloads, under the supervision of specially trained staff, for defendants who are sex offenders, domestic violence offenders, or who have mental health issues.

4. Term of Imprisonment as a Condition of Probation. A court is permitted to place the defendant on probation, and in the case of a person convicted of a crime, to serve a term of imprisonment for a term fixed by the court, not to exceed 364 days, to be served as a condition of probation. If the defendant is convicted of a disorderly persons offense, the court may sentence him or her to serve a term of imprisonment, not to exceed 90 days, to be served as a condition of probation.
5. Imprisonment. The court may order the defendant to serve a period of incarceration in a New Jersey State Prison. Any period of incarceration that exceeds 364 days must be served in a New Jersey State Prison.
6. Community Service. The court may order that the defendant be required to perform a specified number of hours of community service. This can be imposed with or without probation.
7. Residential Facility. The court may order the defendant to serve his or her sentence in a halfway house or other residential facility.

In addition to the above sentencing options, the court may order the suspension of the defendant's driver's license.

Presumptions of Incarceration

There is a presumption of incarceration for persons sentenced for first and second-degree crimes or for persons convicted for a second time of theft of a motor vehicle or of the unlawful taking of a motor vehicle. In order to overcome this presumption, which would allow the judge to sentence the offender to probation or another non-custodial term, the court, having regard for the character and condition of the defendant, must find that the defendant's imprisonment would be a serious injustice which overrides the need to deter such conduct by others. N.J.S.A. 2C:44-1(d).

Generally, there is no presumption of incarceration for crimes of the third and fourth degree. The judge may still sentence the offender to incarceration, but there is a presumption against incarceration if the offender is a first time offender. This presumption against incarceration does not apply to certain third or fourth degree

crimes such as theft of a motor vehicle, unlawful taking of a motor vehicle, eluding, or a crime of the third or fourth degree constituting bias intimidation. N.J.S.A. 2C:44-1(e).

Minimum Terms and Parole Ineligibility

The minimum term of imprisonment for any crime of the first, second, or third degree must be at least three years. If a judge decides to impose a prison sentence, the judge may also fix a minimum term of parole ineligibility. A minimum parole ineligibility term is a period of time that the offender must serve in prison before becoming eligible for release on parole. The term can be set if the judge is convinced that the aggravating factors outweigh the mitigating factors. A minimum parole ineligibility term can be up to one-half of the maximum sentence that is imposed. N.J.S.A. 2C:43-6(b).

A number of statutes require a judge to impose a mandatory minimum parole ineligibility term. In these cases, the judge has no discretion whether to impose a minimum term. Some examples are persons convicted of possession of a firearm with intent to use it against the person of another or committing certain offenses while using or possessing a firearm (Graves Act), death by auto while under the influence of alcohol or drugs, sex offenses (second or subsequent offenses), distributing drugs near or on school property (School Zone) and any offense listed under N.J.S.A. 2C:43-7.2, the No Early Release Act (NERA).

Extended Term Eligibility

Based upon the underlying offense, a defendant may be subject to an extended period of custodial incarceration, either mandated or discretionary.

The Criminal Code also gives sentencing judges the discretion to extend the term of imprisonment of offenders convicted of first, second, or third degree offenses who are (1) persistent offenders, (2) professional criminals, (3) hired criminals, (4) second offenders with a firearm, (5) convicted of committing certain crimes and during the course of committing the crime used, or were in possession of a stolen motor vehicle, or (6) convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact or criminal sexual contact involving violence and the victim was 16 years of age or younger, or (7) knowingly involved in criminal street gang activity. In most cases in order to extend the term, the prosecutor must make an application to the court and the court must hold a hearing. At the hearing, the State must prove that the defendant falls within the enhancement criteria set forth in N.J.S.A. 2C:44-3. Pursuant to R. 3:21-4(e)-(f), the prosecutor need not file notice to seek an extended term if the extended term exposure is part of the negotiated plea agreement and is set forth on the plea form. The following chart depicts the ordinary and extended term ranges for each degree of crime.

TERMS OF IMPRISONMENT	N.J.S.A. 2C:43-6(a) Ordinary Term Range	N.J.S.A. 2C:43-7(a) Extended Term Range
1 st Degree	10-20 years	20 - Life
2 nd Degree	5-10 years	10-20 years
3 rd Degree	3-5 years	5-10 years
4 th Degree	Up to 18 months	5 years ¹⁰

Violations of Probation

As noted above, a period of probation supervision is a sentencing option available to the court under the Criminal Code. When the court places a defendant on probation, it shall attach such reasonable conditions authorized under the Criminal Code as it deems necessary to ensure that the defendant will lead a law-abiding life, or to assist him or her in doing so. Those conditions may include finding and maintaining employment, attendance at a drug or alcohol treatment program, reporting to the supervising probation officer as directed, performing community service and paying restitution to victims.

The supervising probation office should not perceive the enforcement of the conditions of probation as subject to *ad hoc*, discretionary implementation. If the probation officer is unable to enforce the standard or special conditions of probation the matter must be placed before the court for a judicial determination. These events are listed on the appropriate Criminal Division judge's calendar as a violation of probation (VOP). All VOPs should be scheduled in Promis/Gavel and the outcome entered in the sentencing record, so any change in sentence may be reported to the New Jersey State Police. The court may terminate probation, continue probation (up to a maximum of 5 years), or revoke probation, in which case the court may impose any sentence that could have been imposed at the original sentencing for the offense for which the defendant was convicted.

Judgment of Conviction

Once the court determines the appropriate sentence for the defendant, a judgment of conviction (JOC) is prepared and signed by the sentencing judge. The JOC is the official court record of the sentence and includes the crimes charged, the crimes the defendant was convicted of violating, the terms of the sentence, the mitigating and aggravating factors, and jail credits. An example of a JOC can be located in the administrative directive section of the Judiciary InfoNet site. Additional information regarding JOCs or sentencing can be found in the *Guide on the Preparation of Judgments of Conviction* and the *Sentencing Primer* published by the AOC Criminal Practice Division. These manuals are available on the InfoNet.

¹⁰ In the case of a crime of the fourth degree pursuant to N.J.S.A. 2C:43-6(f) and N.J.S.A. 2C:43-6(g), for a term of three to five years.

C. TREATMENT ASSESSMENT SERVICES FOR THE COURTS

Given the large number of drug cases in our criminal courts, it is essential that judges obtain professional assessments on the nature of an offender's addiction when sentencing defendants or considering PTI. The Criminal Division Treatment Assessment Services for the Courts (TASC) program conducts these assessments. The TASC Program in New Jersey is based on a national program model initiated in 1972 to break the addiction/crime cycle of non-violent, drug-involved offenders by linking the legal sanctions of the criminal justice system with the therapeutic interventions of drug treatment programs. Since its inception in New Jersey in 1978, to its recommendation by the Supreme Court's Task Force on Drugs in 1990 as a necessary drug assessment service for the Courts, the program has expanded and is now available statewide in all 15 vicinages.

The comprehensive services of TASC provide a needed bridge between the criminal justice system, the offender and the treatment service system. With the advent of drug court initiatives in New Jersey in 1995, substance abuse evaluators from the TASC program have been instrumental in the development and operation of local drug courts. TASC has proven to be an essential cornerstone to the high degree of coordination needed between courts and treatment providers. The service provisions of TASC include:

- Identifying drug-involved offenders
- Treatment referral and placement
- Treatment monitoring
- Drug Court team participation
- Drug and alcohol assessments
- Resource information
- Drug testing
- Substance abuse education
- Treatment matching
- Consultations
- Court appearances
- Status reports

In a typical TASC Program, a trained and certified full-time substance abuse evaluator (SAE) will receive requests for a drug evaluation from the judge, criminal division probation officer, attorneys, or another referring agent of the Courts. The TASC evaluator will schedule an immediate intake interview. The defendant will receive drug testing and a thorough bio/psycho/social assessment using the Addiction Severity Index. Next, the TASC evaluator defines the defendant's treatment needs and an appropriate level of care by applying the American Society of Addiction Medicine's patient placement criteria. Then, available treatment resources are identified and contacted. A complete evaluation report is prepared and includes specific treatment recommendations, an appropriate treatment provider, and an anticipated entry date for the defendant. When a defendant is deemed appropriate for substance abuse intervention by the courts, the TASC program can provide regular updates that assist in tracking and monitoring treatment progress and completion as the case moves through the criminal justice process.

The Judiciary recognized the need to address repeat offenders committing new crimes to support undetected drug habits. The TASC program responds to this crucial need by providing highly trained and specialized substance abuse evaluators who perform expert assessments and develop appropriate treatment recommendations for the courts. The TASC Program statewide has the potential of intervening and halting the revolving door process of the addiction/crime cycle by intervening with drug-involved defendants and addressing their substance abuse treatment needs.

For more information, contact your local Criminal Division Manager.

D. DRUG COURTS

Criminal Division drug courts are highly specialized teams that function within the existing Superior Court structure to address nonviolent drug-related cases. They are unique in the criminal justice environment because they build a close collaborative relationship between criminal justice and drug treatment professionals. Within a cooperative courtroom atmosphere, the judge heads a team of court staff, attorneys, probation officers, substance abuse evaluators, and treatment counselors all working in concert to support and monitor a participant's recovery. Drug court programs are rigorous, requiring intensive supervision based on frequent drug testing and court appearances.

Specifically, drug courts are special courts for nonviolent, drug-involved offenders. These courts:

- Target offenders who are most likely to benefit from treatment and do not pose a risk to public safety;
- Provide intensive supervision and treatment of offenders soon after arrest;
- Monitor participants' progress and apply swift sanctions for noncompliance;
- Maintain a critical balance of authority, supervision, support, and encouragement;
- Integrate alcohol and drug treatment services with justice system case processing;
- Offer an alternative to the traditional adversarial court process.

The drug court process introduces a streamlined approach to providing services and supervising nonviolent substance-abusing clients rather than just processing cases through a series of courtroom events. The unique collaborative characteristics of drug court allow for early and intense interventions that support community safety and client recovery.

TRADITIONAL COURT	DRUG COURT
<ul style="list-style-type: none"> • Judge, prosecutor, defense lawyer and courtroom staff approach a case primarily as a legal matter. The focus is on defendant's guilt or innocence. • Judge exercises limited role in supervision of defendant. • Relapse, often undetected, may not be readily addressed. 	<ul style="list-style-type: none"> • Court team of judge, prosecutor, defense lawyer, addiction specialists, and probation officers identify appropriate cases for treatment and recovery. • Judge plays central role in monitoring defendant's progress. • Relapses are quickly detected and graduated sanctions applied.

Mandatory Drug Court

The "Special Probation" statute was amended on July 1, 2013 to require admission to the drug court program of otherwise eligible offenders, regardless of whether they made a voluntary application. Mandatory drug courts were phased-in over several years, but are now statewide. See P.L. 2012, c. 23, N.J.S.A. 2C:35-14, N.J.S.A. 2C:35-14-1 and N.J.S.A. 2C:35-14-2.

Additional information about drug courts and the *Drug Court Manual* are available from the New Jersey Judiciary Infonet site.

E. OTHER SENTENCING ALTERNATIVES

1. Pretrial Intervention Program (PTI)

The Pretrial Intervention Program (PTI) provides defendants, generally first-time offenders, with an alternative to prosecution. With the consent of the prosecutor and the court, PTI seeks to render early rehabilitative services to deter future criminal behavior. The PTI program is based on a rehabilitative model that recognizes that there may be a causal connection between the offense charged and the rehabilitative needs of a defendant. PTI also provides early resolution of a case, which serves the interests of the victim, the public and the defendant, and allows resources to be devoted to more serious criminal offenders. A guilty plea may now be imposed in some cases as a condition of the prosecutor's consent to enrollment in order to avoid proof problems if the defendant violates the conditions of enrollment and the matter is returned for prosecution.

Supervision under the PTI program can be for as long as thirty-six months. Certain standard conditions are imposed on those accepted into PTI, such as, random urine monitoring, and assessments for fees, penalties and fines. Additional conditions may also be imposed to require the performance of community service, payment of restitution, and submission to psychological and/or drug and alcohol evaluations with compliance to recommended treatment programs. If a defendant successfully completes the conditions of PTI, the original charges are dismissed and there is no record of conviction. If a defendant does not successfully complete the conditions of

PTI, the defendant is terminated from the PTI program and the case is returned to the trial list. Defendants may only be admitted into PTI once, and they are not eligible for the program if they have previously participated in the Conditional Discharge or Conditional Dismissal Programs, or if they previously completed the Veteran's Diversion Program.

PTI is governed by N.J.S.A. 2C:43-12 and R. 3:28-1 et seq. Additional information about PTI is also available on the New Jersey Judiciary Infonet site.

2. Intensive Supervision Program (ISP)

The Intensive Supervision Program (ISP) is run by the Judiciary's Probation Division. Under ISP, offenders sentenced to state prison apply to a panel of judges for release into the program. To be eligible, applicants must demonstrate the willingness and ability to adhere to the program's strict guidelines. ISP provides a structure in which certain offenders, sentenced to state penal institutions in the traditional fashion, are afforded an opportunity to work their way back into the community under intensive supervision. The program requires that offenders present a participant plan (work, study, community service, etc.) so their return to the community will result in a positive social adjustment and will not jeopardize the public's safety. Other features include extensive client contacts and drug testing; full-time employment, or vocational training, requirements; community service requirements; strict curfew requirements; drug, alcohol and psychological counseling, if necessary; mandatory payment towards court fines, fees and penalties, and/or restitution; and use of the best contemporary technologies and programs for managing cases. A somewhat similar program, the Juvenile Intensive Supervision Program (JISP), is available as a sentencing alternative to judges in Family Court.

Additional information about ISP is available on the New Jersey Judiciary Infonet site.

3. Conditional Discharge Program

The Conditional Discharge Program is available to first-time offenders charged with or convicted of a drug or drug paraphernalia-related disorderly persons or petty disorderly persons offense. Under this program, the court may suspend further proceedings, and with the consent of the defendant, place him or her under supervisory treatment with reasonable terms and conditions. Alternatively, the court may, after a guilty verdict or plea, and without entering a judgment of conviction, place the defendant under supervisory treatment with reasonable terms and conditions. The term of supervisory treatment may not exceed three years, and the court may not refer the defendant to a residential treatment facility for a period of time that exceeds the maximum period of confinement for the underlying offense. Upon fulfillment of the terms and conditions of supervisory treatment, the proceedings against the defendant are dismissed and shall not be deemed a conviction. Defendants are only allowed one conditional discharge, and are not eligible for the program if they have previously participated in PTI or the

Conditional Dismissal Programs, or if they previously completed the Veteran's Diversion Program. See N.J.S.A. 2C:36A-1.

4. Veteran's Assistance Project (VAP)

The Veterans Assistance Project (VAP) is not a diversionary program; it is a voluntary referral service for veterans who become involved with the court system and who may be in need of services from their local Veterans Service Office (VSO). The goal is to acquire services and support to improve the quality of life for the men, women, and families who have made sacrifices in the defense of the United States. Available services can include mental health counseling, addiction services, legal services, and housing. The Veteran's Assistance Project is a collaborative effort involving the Judiciary, the New Jersey Department of Military and Veterans Affairs (DMAVA), and the New Jersey Division of Mental Health and Addiction Services (DMHAS). The Judiciary component offers voluntary identification and referral to one of 16 state VSOs. Once a veteran has been identified as such in the court system and volunteers to participate, the court notifies the local VSO, which then assists in identifying and providing the services that the veteran needs.

5. Conditional Dismissal Program

The Conditional Dismissal Program is a Municipal Court diversionary program for first-time offenders charged with certain petty disorderly persons or disorderly persons offenses. Similar to the Conditional Discharge Program, defendants may receive only one conditional dismissal, and defendants who have previously participated in the PTI, or Conditional Discharge programs, or who previously completed the Veteran's Diversion program, are ineligible for the Conditional Dismissal program. Certain offenses, such as domestic violence offenses, offenses against minors or elderly or disabled persons, or driving under the influence of alcohol, will also render the defendant ineligible for the Conditional Dismissal Program. Defendants charged with disorderly persons drug offenses are also excluded from the Conditional Dismissal program, as they are eligible for diversion under the conditional discharge statute.

Defendants must enter a guilty plea or be found guilty before admission into the Conditional Dismissal Program. If, after considering all relevant information, the court determines that the defendant is a suitable candidate, the court may, without entering a judgment of conviction, admit the defendant into the Conditional Dismissal Program for 12 months. Defendants placed on the program shall be required to pay all restitution, court costs, and other mandatory assessments that would have been imposed had the defendant been found guilty and sentenced on the charge(s). The court must advise the defendant of all financial conditions that will be imposed prior to his or her placement into the program. Finally, the court may extend the defendant's 12-month conditional dismissal term for good cause. See N.J.S.A. 2C:43-13.1 to -13.9.

6. Veteran's Diversion Program

The Veterans Diversion Program, effective December 1, 2017, is a prosecutorial program designed to divert eligible military service members into appropriate case management and mental health treatment services as early as possible, thus avoiding criminal records, sanctions and stigma, while expediting the person's recovery and wellness. Prosecutors have the sole discretion to determine whether a service member qualifies for and is admitted into the program, as well as the length of the program. Prosecutors also have the discretion to admit a person into the program more than once. Successful completion of the Veteran's Diversion Program, however, bars subsequent entry into the PTI, Conditional Dismissal and Conditional Discharge programs.

The Veteran's Diversion Program is available to service members: (1) charged with non-violent petty disorderly persons offenses, disorderly persons offenses, or crimes of the third or fourth degree; and (2) who have a prior diagnosis of mental illness or who a law enforcement officer or prosecutor believes has a mental illness based on exhibited behaviors and symptoms. Defendants may apply to the prosecutor for admission into the program at any time prior to disposition of the charges. Upon the defendant's admission, the prosecutor will ask the court for a postponement of the proceedings. The court shall review the status of the deferred prosecution no later than six months after approval of the postponement, and every six months thereafter, to consider whether the postponement should continue. After a minimum of six months from the date of the diversion agreement, the prosecutor may move for dismissal of the pending criminal charges if the defendant: (1) has complied with the terms and conditions of the diversion agreement, (2) has not been charged with any other criminal charges, and (3) based on clinical reports continues to make progress with case management services and mental health recovery. The prosecutor may also ask the court at the time of the dismissal to expunge all records and information relating to the arrest, charge and diversion.

If the defendant fails to comply with any conditions in the diversion agreement, the prosecutor may terminate his or her participation in the program and notify the court that the State is ready to proceed with prosecution.

F. ANCILLARY CRIMINAL PROCEEDINGS

1. Hearing as to Probable Cause

The Court Rules require that when a defendant does not waive a hearing as to probable cause, prior to indictment, the court shall hear the evidence offered by the State within a reasonable time. If the court finds that there is probable cause to believe an offense has been committed and the defendant committed it, the court binds the defendant over for indictment. If the court does not find that probable cause exists, the defendant is discharged. See R.3:4-3. The general practice is not to hold this hearing unless the defendant requests it. When a probable cause hearing is requested, it is often not held

because the prosecutor will present the case to a grand jury for indictment before the scheduled date of the probable cause hearing.

2. Rule 104 Hearings

Generally

Rule 104 of the New Jersey Rules of Evidence describes the procedures required for *in limine* proceedings, specific situations in which the jury should not be present. During these proceedings, the jurors are asked to leave the courtroom due to the risk of undue influence. For example, Rule 104(a) describes the procedure permitting the judge to make a determination as to whether a specific piece of evidence is admissible. If a jury were present when the judge determines this, there would be a significant risk the jury would consider that evidence even if the judge determined it was inadmissible. These hearings are usually conducted before a trial begins to avoid delaying trials.

Common Types of Rule 104 Hearings

Wade Hearing

A Wade hearing, named after a United States Supreme Court Case, United States v. Wade, 388 U.S. 218 (1967), is an evidentiary challenge raised by the defense seeking exclusion of an out-of-court identification of the defendant. Often the defense will allege that the identification is unreliable because it was unduly suggestive. When this occurs, the judge may hold a pretrial hearing, the sole purpose of which is to decide whether to exclude the evidence of the identification. A Wade hearing is not required where the defendant is unable to proffer any pretrial evidence that police procedures directed at identification were impermissibly suggestive. State v. Ortiz, 203 N.J. Super. 518, 522 (App. Div. 1985), certif. denied, 102 N.J. 325 (1985).

Competency Hearing

A competency hearing is held to determine if the defendant is competent to stand trial. It is possible for a defendant to be legally responsible (sane) at the time of the commission of the offense, but yet be incompetent to stand trial. When competency to stand trial is raised, a pretrial hearing is held. At that hearing, the judge determines whether the defendant understands the proceedings and has the present ability to consult intelligently with counsel in order to prepare a defense to the charges. If the defendant is unable to do so, the defendant is deemed incompetent to stand trial. The defendant is then committed to a mental health facility. See N.J.S.A. 2C:4-4 and N.J.S.A. 2C:4-6. If the person is judged incompetent to stand trial, that person cannot be tried unless or until that person regains his or her competency.

Pursuant to N.J.S.A. 2C:4-4(b), the following factors are considered when making a determination as to whether a defendant is competent to stand trial:

1. Whether the defendant is capable of appreciating his/her presence in relation to the time, place and things;
2. Whether the defendant is capable of comprehending the following:
 - a. That he/she is in a court proceeding and charged with committing a criminal offense,
 - b. A judge is presiding over the proceeding,
 - c. The State, via the prosecutor, will attempt to secure a conviction for the alleged criminal offense,
 - d. A defense attorney undertakes the responsibility of defending him or her against the State's charge(s),
 - e. That he has the right not to testify, but if he chooses to testify, he will be expected to assert the facts surrounding him at the time and place where the alleged crime was committed.
 - f. The consequences of a conviction and the rights forfeited should the defendant take a plea, and if he does not plead guilty, that a jury will determine his guilt or innocence, and
 - g. The defendant has the ability to participate adequately in the presentation of his/her defense.

Krol Hearing

A Krol hearing is required by State v. Krol, 68 N.J. 236 (1975). If a defendant is acquitted of a criminal offense because he or she was legally insane at the time the offense was committed, the defendant is not automatically released from custody. The defendant can only be released if the court finds that the defendant may be released without danger to the community or to himself or herself. Where a defendant is not released, he or she is committed to a mental health facility and is treated as a person civilly committed. Periodic Krol hearings are required to assess the defendant's mental condition. Review hearings occur at the following intervals: three months from the date of the first hearing, nine months from the date of the first hearing, twelve months from the date of the first hearing, and at least annually thereafter. See R. 3:19-2, R. 4:74-7, and N.J.S.A. 2C:4-8 and 4-9.

Miranda Hearing

In Miranda v. Arizona, 384 U.S. 460 (1966), the United States Supreme Court held that, prior to the interrogation of a defendant, the police must advise a defendant of his or her right to remain silent, right to be represented by counsel, and the right to have counsel appointed for him or her if he or she cannot afford one. If a defendant is properly advised of his or her rights, any statement the defendant makes can be used as evidence in court. When the defendant alleges that he or she was not advised of his or her rights and seeks to have any statements made suppressed, a hearing is held. If the defendant is successful, any statements made by the defendant cannot be used as evidence in court.

Jackson/Denno Hearing

The name is derived from the United States Supreme Court's decision in Jackson v. Denno, 378 U.S. 368 (1964). If the defendant confesses to a crime and thereafter alleges that the confession was involuntary, e.g., coerced, a hearing is held to determine the voluntariness of the confession. R. 3:9-1(d) requires that this hearing take place prior to defendant's pretrial conference. The court must decide whether the confession or statement was voluntarily given or if it was the product of coercion.

Driver Hearing

Driver hearings are evidentiary proceedings that determine the admissibility of sound recordings. The name is derived from the New Jersey Supreme Court's decision in State v. Driver, 38 N.J. 255 (1962). If the State plans to introduce sound recordings at trial, and the defendant objects to their introduction, a hearing is held to determine whether the prerequisites for admission of the sound recording have been met. At the hearing, the State must show that (1) the recording device was capable of taping the conversation; (2) the operator of the recording device was competent to operate the recording device; (3) the recording device was authentic and correct; (4) the recording shows no signs of tampering and has not been altered; and (5) in instances of alleged confessions the statements were elicited voluntarily and without any inducement. Additionally, there are certain characteristics of the recording that must be present including ensuring that the recording is audible, not fragmented, and whether the recording contains any prejudicial information that should be redacted.

Sands Hearing

In State v. Sands, 76 N.J. 127 (1978), the New Jersey Supreme Court held that a defendant's prior criminal history is not automatically admissible to impeach the defendant's credibility as a witness. The determination of whether the defendant's prior criminal convictions are admissible is left to the discretion of the judge. The judge will weigh a number of factors to determine admissibility, including the remoteness of the conviction, the nature of the conviction, and the number of prior convictions.

3. Post-Conviction Relief (PCR)

If a defendant is convicted of a crime, he or she has three avenues open to contest the conviction. A defendant may appeal to the Appellate Division of the Superior Court, make a motion for a new trial, or file a petition for post-conviction relief. Post-conviction relief applications are governed by R. 3:22. A post-conviction relief application may be filed if one of the following grounds is alleged:

- a. There was a substantial denial in the conviction proceedings of the defendant's rights under the Constitution of the United States or the Constitution or laws of New Jersey;

- b. The court that imposed judgment lacked the jurisdiction to do so;
- c. The sentence imposed exceeded that authorized by law;
- d. A ground exists which could be the basis of a habeas corpus or other common-law or statutory remedy; or
- e. Defendant is claiming ineffective assistance of counsel.

The Criminal Division of the Superior Court, Law Division, handles petitions for post-conviction relief.

4. Municipal Appeals

The Criminal Division of the Superior Court is also responsible for hearing appeals from convictions entered in Municipal Court. If a verbatim record or sound recording was made of the trial, the appeal is heard *de novo* (a Latin term which means anew; afresh; a second time). A trial *de novo* is a trial without a jury, where the court will use the record of the trial below to conduct the trial/hearing on appeal. Municipal appeals are determined on the records received, unless the rights of either party would be prejudiced by the condition of the record, or if the rights of the defendant were prejudiced in the Municipal Court. The record can be supplemented if the Municipal Court erred in excluding evidence offered by the defendant; the record is partially unintelligible or defective, or the State offered rebuttal evidence to discredit supplementary evidence admitted at the trial. If the defendant is convicted after the trial, the Superior Court imposes the sentence. If the defendant is acquitted, the defendant is ordered discharged. The most common type of Municipal appeal is from a motor vehicle conviction, such as driving while intoxicated.

5. Comprehensive Enforcement Program (CEP)

The Comprehensive Enforcement Program (CEP) was established in 1995 to increase the collection of court-ordered fines and fees imposed on probationers through a cost-efficient and effective method. The three main goals of the program are collecting money, enforcing orders of the court, and promoting accountability.

CEP works through the Probation Division, which keeps track of missed court-ordered payments or community service. When an individual fails to pay court-ordered fines or serve community service sentences, he or she is summoned to appear before an enforcement program hearing officer. An individual is eligible for the program when court-ordered payments are over 60 days late. The individual either pays the full amount due or works out a practical new payment schedule. If the latter, the new payment schedule is finalized as a new court order that is reviewed and signed by the designated CEP judge, which in most cases is a criminal division judge. If a probationer fails to appear before the hearing officer, an arrest warrant may be issued.

The Probation Division monitors compliance with the new payment schedule. Hearing officers may add penalties for lack of cooperation or noncompliance. If an individual fails to comply with the new plan, the hearing officer will consider a range of increasingly negative sanctions for noncompliance. There are a series of sanctions that hearing officers use before a person is sentenced to county jail, such as wage garnishments, extension of the probation sentence or referral to the judge for a VOP hearing.

In addition to adult collections, CEP also conducts hearings for juvenile collections, juvenile community service, the Lawyers Fund for Client Protection, the Adult and Juvenile Intensive Supervision Programs, and Municipal Court non-probation community service cases.

6. Sexually Violent Predators (SVP)

The New Jersey Sexually Violent Predator Act, N.J.S.A. 30:4-27.24 et seq., became effective on August 12, 1999. This law modifies the involuntary civil commitment process and establishes a means to involuntarily commit sexually violent predators. A sexually violent predator (SVP) is defined in N.J.S.A. 30:4-27.26 as a person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment.

Pursuant to N.J.S.A. 30:4-27.27, when it appears that a person may meet the criteria of a SVP, the agency with jurisdiction shall give written notice to the Attorney General 90 days, or as soon as practicable, prior to:

- a. The anticipated release from total confinement of a person who has been convicted of or adjudicated delinquent for a sexually violent offense;
- b. Any commitment status review hearing of an individual found Not Guilty by Reason of Insanity (NGRI) for a sexually violent offense, at which the Department of Human Services intends to recommend discharge or believes that discharge may be likely; or,
- c. Any hearing of an individual determined to be mentally incompetent to stand trial, if charged with a sexually violent offense, at which the Department of Human Services intends to recommend discharge or believes that discharge may be likely.

N.J.S.A. 30:4-27.28 describes how the involuntary commitment proceeding is initiated and sets forth the requirements for a temporary commitment order.

The Attorney General may initiate a court proceeding pursuant to N.J.S.A. 30:4-27.28 by filing the required submission with the court in the jurisdiction in which the person

whose commitment is sought is located. N.J.S.A. 30:4-27.28(f). If the court finds that there is probable cause to believe that the person is a SVP in need of involuntary commitment, it shall issue an order setting a date for a final hearing and authorizing temporary commitment to a secure facility designated for the custody, care and treatment of SVPs pending the final hearing. In no event shall the person be released from confinement prior to the final hearing. N.J.S.A. 30:4-27.28(g).

A person who is involuntarily committed shall receive a court hearing with respect to the issue of continuing need for involuntary commitment as a SVP within 20 days from the date of the temporary commitment order. N.J.S.A. 30:4-27.29(a). A person subject to involuntary commitment shall have counsel present at the hearing and shall not be permitted to appear at the hearing without counsel. N.J.S.A. 30:4-27.29(c). At least ten days prior to a court hearing, the Attorney General shall cause notice of the court hearing to be served upon the person, the person's guardian, if any, the person's next of kin, the person's attorney, and the agency with jurisdiction having custody of the person in any other individual specified by the court. N.J.S.A. 30:4-27.30(a).

Pursuant to N.J.S.A. 30:4-27.31, a person subject to involuntary commitment as a SVP shall have the following rights at a court hearing and any subsequent review hearing:

- The right to be represented by counsel or, if indigent, by appointed counsel;
- The right to be present at the court hearing unless the court determines that because of the person's conduct at the hearing the proceeding cannot reasonably continue while the person is present;
- The right to present evidence;
- The right to cross-examine witnesses;
- The right to a hearing *in camera*.

If the court finds by clear and convincing evidence that the person needs continued involuntary commitment as an SVP, it shall issue an order authorizing the involuntary commitment of the person to a facility designated for the custody, care and treatment of sexually violent predators. N.J.S.A. 30:4-27.32(a). The court shall also schedule annual review hearings, and may schedule additional review hearings, but except in extraordinary circumstances, no more than once every 30 days. N.J.S.A. 30:4-27.32(a) and N.J.S.A. 30:4-27.35.

If a person has been committed based upon a determination that the person is mentally incompetent to stand trial, the court shall first hear evidence and determine whether the person did commit the act charged before the person can be involuntarily committed pursuant to this law. N.J.S.A. 30:4-27.33. The rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to a defendant at a criminal trial, other than the right to a trial by jury and the right not to be tried while incompetent, shall

apply. N.J.S.A. 30:4-27.33a. After the conclusion of the hearing on this issue if the court finds beyond a reasonable doubt that the person did commit the act charged, the court shall enter a final order, appealable by the person, on that issue and may proceed to consider whether the person should be committed pursuant to this act. N.J.S.A. 30:4-27.33(c).

7. Expungements

A record of an arrest or conviction can follow a person forever. Applications for schools, jobs, apartments, and military service often ask about criminal records. Many people can address this problem because they are eligible for expungement of their New Jersey criminal records. New Jersey law provides a limited right to expungement. The purpose of New Jersey's expungement law is to give a person who has one or very few convictions a fresh start. When an expungement is granted, law enforcement agencies and the judiciary are required by law to keep that person's records confidential.

The New Jersey expungement law states in detail who is eligible for an expungement. An eligible person must prepare and file a petition for expungement. The petition for expungement must be filed in the Superior Court in the county where the arrest or prosecution took place. Copies of the petition are also sent to any criminal justice agency that played any role in the person's arrest, incarceration or conviction, such as the police, probation division, county jail, or prison. A judge then decides whether the person should be granted an expungement order. If the expungement is granted, the arrest and criminal proceedings are deemed to have never occurred, with some exceptions. It also allows the person to fill out school, job, and military applications truthfully without having to reveal that he or she was once arrested or convicted.

The law does, however, allow expunged records to be used later in certain cases. Should the person become involved in any additional criminal proceedings, the records can be used. This means that if the person is arrested following expungement, his or her past records will be considered in deciding eligibility for the PTI program, release on bail, and during sentencing. If a crime victim files a claim with the Victims of Crime Compensation Office, the expunged records of the person convicted of the crime can be used in connection with the claim. If the criminal activity or arrest results in the person being incarcerated, the Department of Corrections is allowed to use the records in deciding how to classify and assign the prisoner within an institution. Following a conviction and a jail sentence, expunged records can be used in deciding eligibility for parole. Further, the expungement order does not bar the retention of material and/or information required for purposes of the PTI registry pursuant to R. 3:28(e), and shall not prohibit the filing of reports required under the Controlled Dangerous Substance Registry Act of 1970. Therefore, records will not be removed from and can be placed in these registries.

Many people want to go through the expungement process so that they can have clear records when they apply for jobs. However, the law does allow expunged records to be used when a person applies for a job with a law enforcement agency or the courts,

including jobs with state, county, and local corrections departments, prosecutors, courts, and police. This does not mean that those agencies will reveal the existence of an applicant's expunged record. Agencies that are not associated with law enforcement (such as the Real Estate Commission or the Department of Banking and Insurance) that obtain information about a person's criminal record prior to expungement cannot be ordered legally to correct their records after an expungement order is granted. Such agencies are beyond the reach of expungement orders and may continue to publicize such information.

For further details on expungements see Chapter 52 of the New Jersey Criminal Code and the New Jersey Judiciary *pro se* expungement package available on the Judiciary InfoNet.

8. Drug Offender Restraining Order Act (DORA)

The Drug Offender Restraining Order Act Of 1999 (DORA) provides that, upon application of a law enforcement officer or a prosecuting attorney, the court shall issue a restraining order prohibiting any person, including a juvenile, charged with or convicted of certain drug offenses, or the unlawful possession or use of an assault firearm, as defined in N.J.S.A. 2C:39-1(w), from entering any premises, residence, business establishment, location or specified area, including all buildings and all appurtenant land, in which or at which a criminal offense occurred or is alleged to have occurred or is affected by the criminal offense with which the person is charged. A person, however, may not be barred from entering public rail, bus or air transportation lines, or limited access to highways that do not allow pedestrian access.

The court is required to issue a restraining order only upon application by a law enforcement officer or prosecuting attorney and submission of a certification describing the location of the offense. A law enforcement officer or prosecuting attorney has discretion not to seek a restraining order in the following four circumstances: (1) if the defendant is charged with an offense resulting from the stop of a motor vehicle; (2) if the defendant was using public transportation; (3) if the defendant establishes by clear and convincing evidence that the defendant lawfully resides at or has legitimate business on or near the place, or otherwise legitimately needs to enter the place; or (4) if the defendant establishes that the issuance of a restraining order would cause undue hardship to innocent persons and would constitute a serious injustice that overrides the need to protect the rights, safety and health of the other persons residing in or having business in the place.

DORA provides for various procedures regarding the issuance of restraining orders, depending on the type of the charging document and whether or not the person is a juvenile. The process for a juvenile is handled in Family Court and will not be covered below. When a person is charged with a criminal offense on a complaint-warrant and is later released on conditions of pretrial release, the court, upon application of a law enforcement officer or prosecuting attorney, is required to issue the restraining order as a condition of release. When a person is charged with a criminal offense on a

complaint-summons, the court, upon application of a law enforcement officer or prosecuting attorney, is required to issue the restraining order at the time of the defendant's first appearance.

The court need not issue a restraining order for which application has been made if the defendant establishes, by clear and convincing evidence, that he or she lawfully resides at or has legitimate business on or near the place, or otherwise legitimately needs to enter the place. In such an event, the court shall not issue an order unless the court is clearly convinced that the need to bar that person from the place to protect the public safety and the rights, safety and health of the residents and persons working in the place outweighs the person's interest in returning to the place where the offense or conduct is alleged to have occurred. If the balance of the interests of the person and the public so warrants, the court may issue an order imposing conditions upon the person's entry at, upon or near the place.

The court may also forego the issuance of the restraining order if the defendant establishes by clear and convincing evidence that the issuance of a restraining order would cause undue hardship to innocent persons and would constitute a serious injustice that overrides the need to protect the rights, safety and health of the other persons residing or having business in the place.

DORA requires that any restraining order issued must be drafted with sufficient specificity to enable the defendant to comply with, and a law enforcement agency to enforce, the order. The order must also contain a provision prohibiting the person from entering an area of up to 500 feet surrounding the premises, residence, business establishment, etc., unless the court rules that a different buffer zone would better effectuate the purposes of the act. The order may also permit the person to enter the area during specified times for specified purposes, such as attending school during regular school hours. When appropriate, DORA permits the court to append to the order a map depicting the place the defendant is prohibited from entering.

The court is required to provide a notice of the restraining order to the local law enforcement agency where the arrest occurred and to the county prosecutor. In addition, prior to the person's conviction, the local law enforcement agency is permitted to post a copy of the order, or an equivalent notice containing the terms of the order, upon the principal entrances of the place from which the person is barred from entering, or in any other conspicuous location. Any law enforcement agency may also publish a copy of the order, or a similar notice, in a local newspaper, and may also distribute copies to residents or businesses located within the area delineated in the order, to the appropriate administrator of any school or government-owned property, or to any tenant association representing the residents of the affected area.

A pretrial restraining order is to remain in effect until the case has been adjudicated or dismissed, or for not less than two years, whichever is less. A post-conviction order is to remain in effect for such period of time as shall be fixed by the court, but not longer than the maximum term of imprisonment or incarceration allowed by law for the

underlying offense or offenses. If the order extends beyond any actual term of imprisonment, the court is required to set continued compliance with the order as a required condition of probation, ISP or parole. At the time of sentencing, the court is required to advise the defendant that the restraining order shall be effective for a fixed time period. The court is required to include that time period in the judgment of conviction. The court is also required to notify the law enforcement agency that made the arrest and the county prosecutor of the effective time period of the restraining order.

All applications to stay or modify an order, including an order originally issued in Municipal Court, are required to be made in the Superior Court. The court is required to immediately notify the county prosecutor in writing whenever an application is made to stay or modify an order issued pursuant to DORA. If the court does not issue a restraining order, the sentence imposed by the court for a criminal offense is not to become final for ten days in order to permit the appeal of the court's findings by the prosecution.

There are separate procedures for implementing DORA in the Municipal Courts, Criminal Division and Family Division of the Superior Court. The full procedures are available on the Judiciary InfoNet site.

9. Megan's Law

On October 31, 1994, the New Jersey Legislature enacted the Registration and Community Notification Laws (RCNL), N.J.S.A. 2C:7-1-11, also known as Megan's Law. Megan's Law requires certain convicted sex offenders to register with law enforcement authorities, and it provides for varying levels of community notification based upon the degree of risk posed to the offender's community. Megan's Law applies retroactively to adults convicted, of a narrow set of offenses when the individual's conduct was characterized by a pattern of repetitive and compulsive behavior.

Megan's Law requires registration by sex offenders with local law enforcement authorities or the State Police. The registrant must provide his or her name, fingerprints, social security number, age, race, sex, and date of birth, height, weight, hair and eye color, address of legal residence, address of current temporary residence, and date and place of employment. The registrant also must provide certain information related to the crime or crimes that required registration. The law also provides that registrants who change their address must re-register, and persons moving to or returning to New Jersey from another jurisdiction must register, if required by law. Sex offender registration requirements also apply to persons who are required by law in another jurisdiction to register as a sex offender, and either are enrolled on a full-time basis in any public or private educational institution in New Jersey, including any secondary school, trade, or professional institution, institution of higher education or other post-secondary school, or who are employed or carry on a vocation in New Jersey on either a full-time or part-time basis, considered to be more than 14 consecutive days or for an aggregate period exceeding 30 days in a calendar year. An individual who

fails to register as required under the law may be charged with a third degree crime. N.J.S.A. 2C:7-2a(3).

Fifteen years after the conviction or release from a correctional facility, whichever is later, a registrant may make application to the Superior Court, Criminal Division, to terminate the obligation to register. The registrant must provide proof that no offense has been committed within those 15 years and that he or she is not likely to pose a threat to the safety of others. However, under N.J.S.A. 2C:7-2(g), a registered sex offender who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for more than one sex offense as defined in N.J.S.A. 2C:7-2b or who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for aggravated sexual assault or sexual assault involving physical force or coercion cannot petition the Superior Court to terminate the registration obligation. The Supreme Court held in In the Matter of Registrant J.G., 169 N.J. 304 (2001), that the Megan's Law registration and community notification orders for juvenile delinquents who commit a sexual offense when under the age of 14 will terminate at age 18, if after a hearing held on motion of the juvenile, the Court determines by clear and convincing evidence that the delinquent is not likely to pose a threat to the safety of others.

The prosecutor in the county in which the registrant resides assigns the registrant a tier using the Registrant Risk Assessment Scale (RRAS) for adult registrants or the Juvenile Risk Assessment Score (JRAS) for registrants who are 18 or under at the time of tiering. The RRAS/JRAS is designed to provide a method of determining what risk of re-offense a registrant poses to the community: high, moderate, or low.

The RRAS consists of four main categories: the seriousness of the registrant's offense, the registrant's offense history, personal characteristics of the registrant, and community support available to the registrant. These four categories provide for a total of 13 separate criteria. These criteria are evaluated and assigned a point score. The combined points from all criteria determines the final score for tiering purposes: Tier 1 is below 37 points; Tier 2 is 37-73 points and Tier 3 is 74-111 points. The tier assignment determines which groups or individuals in the community receive notice. A Tier 1 assignment is designated low risk and law enforcement will be notified of the registrant's presence in the community and provided certain identifying information about the registrant. A Tier 2, moderate risk, classification normally requires notification to law enforcement, schools and community organizations. A Tier 3, high risk, classification normally requires notification to law enforcement, schools, community organizations, and members of the public likely to encounter the registrant. The JRAS consists of 14 separate criteria. Tier 1 is below 10 points, tier 2 is 10-19 points and tier 3 is 20-28 points.

After the prosecutor assigns a registrant to a tier, the registrant is then notified by the Prosecutor's Office as to their proposed tier classification and scope of community notification. The registrant has 14 days from the date of the notice to object to the prosecutor's decision of tier assignment or scope of community notification.

On July 23, 2001, P.L. 2001, c.167 was enacted. The law, codified at N.J.S.A. 2C:7-12 through N.J.S.A. 2C:7-19, provides for the establishment of the Sex Offender Internet Registry. Under N.J.S.A. 2C:7-13, the State Police are to develop and maintain the Sex Offender Internet Registry. N.J.S.A. 2C:7-14 provides that the Attorney General is to "strive to ensure the information contained in the Sex Offender Internet Registry is accurate, and that the data is revised and updated as appropriate in a timely and efficient manner." The Website address for the Registry is www.njsp.org.

The judge reviews the prosecutor's proposed tier assignment, scope of notification and/or inclusion on the Sex Offender Internet Registry. If the registrant requests a hearing, the judge hears arguments from the prosecutor and registrant/or counsel. The judge then determines the registrant's tier, scope of notification, and/or inclusion on the Sex Offender Internet Registry. Notification will not proceed until after the judge makes a determination and an order is entered as to the registrant's tier, scope of notification and/or inclusion on the Sex Offender Internet Registry.

Tier 1 or Tier 2 registrants whose scope of notification has been determined to be low will not be included on the Sex Offender Internet Registry. Tier 2 registrants whose scope of notification has been determined to be moderate are included on the Sex Offender Internet Registry. However, if a Tier 2 registrant's sole offense which makes him/her subject to Megan's Law is within one of the three exceptions under N.J.S.A. 2C:7-13(d), the offender will not be included on the Sex Offender Internet Registry. The exceptions are that the sex offense was (1) committed while the offender was a juvenile, (2) an incest offense, or (3) an offense where the victim consented to the offense but was underage. The prosecutor can still try to include the registrant on the Sex Offender Internet Registry despite him/her falling within one of the exceptions by establishing by clear and convincing evidence that, given the particular facts and circumstances of the offense and the characteristics and propensities of the offender, the risk to the general public posed by the offender is substantially similar to that posed by other moderate risk offenders who do not fall under the exceptions. See N.J.S.A. 2C:7-13(e).

N.J.S.A. 2C:7-13 provides that all offenders whose risk of re-offense is high or for whom the Court has ordered notification in accordance with N.J.S.A. 2C:7-8(c)(3) will be listed on the Sex Offender Internet Registry.

After the Megan's Law Judge makes the tier determination, the automated Megan's Law Data Collection Instrument (DCI) form is emailed to the *Megan's Law Mailbox*, which is maintained by the Criminal Practice Division. This information is needed to fulfill the mandate in *Doe v. Poritz*, 142 N.J. 1, 39 (1995), that the AOC prepare an annual *Report on the Implementation of Megan's Law*. The adult and juvenile DCI forms are located on the *InfoNet* under *Forms/Criminal Division Forms/Megan's Law Data Collection*. Also on that webpage are written instructions to guide staff step-by-step through this process and a *Checklist* to simplify when information should be sent to the AOC.

Additional information about Megan's Law can be obtained from the *Megan's Law Manual Overview and Case Processing Protocol* published by the AOC Criminal Practice Division.

10. Sex Offender Restraining Order (SORO)

A SORO refers to Sex Offenders Restraining Order issued under Nicole's Law. This law permits the court to issue an order prohibiting a defendant charged with, or convicted of a sex offense, from having any contact with a victim. The restraining order may include prohibiting the defendant from entering a victim's residence, place of employment, business, or school, and from harassing or stalking the victim or his/her relatives. The order can be issued as a condition of pretrial release, to continue a prior order, or upon conviction. See N.J.S.A. 2C:14-12 and N.J.S.A. 2C:44-8.

After an issued SORO is entered into P/G, it is transmitted to the Domestic Violence Central Registry (DVCR) where it can be viewed by law enforcement.

11. Stalking Restraining Order

A permanent Stalking Restraining Order, upon request of the victim, shall be issued by the court for a stalking conviction. The order restrains the defendant from making contact with the victim, the victim's employers, or other individuals. See N.J.S.A. 2C:12-10.1.

Similar to a SORO, a Stalking Restraining Order is transmitted to the DVCR once it is entered in P/G.

12. Gun Permits

The Criminal Division of the Superior Court is responsible for the issuance of permits to carry handguns and retail firearms licenses; as well as appeals from the denial of a firearms identification card/purchasers permit. Revocation hearings on any type of gun permit are also held in the Superior Court. For additional information on gun permits, please refer to the *Gun Permit Manual* available on the InfoNet.

Firearm Purchaser Identification Card

In order to purchase a rifle, shotgun or antique cannon, other than an antique rifle or shotgun, a firearms purchaser identification card (FPIC) must be obtained. Applicants must apply on form S.T.S.-33 and follow N.J.S.A. 2C:58-3(e) and N.J.A.C. 13:54-1.4(a), (b), (c), and (d), which list the additional supporting documents required to accompany the application. The forms are submitted to the chief of police in the municipality in which the applicant resides, or to the State Police if the applicant's municipality is served by the State Police or the applicant resides out of state. Applicants who are denied a FPIC by the chief of police or the State Police are entitled to appeal the decision to the Superior Court. The applicant must file a written notice of appeal within 30 days of the denial to the Superior Court of the county in which he/she resides, or to

the Superior Court of the county in which the application was denied if a non-resident. As of November 17, 2014, a \$50 filing fee is required for an appeal to the Superior Court. The appeal hearing should be held within 30 days of the filing. The Court Rules are silent as to appeals in gun permit matters, therefore it is recommended that the *Gun Permit Manual* be referenced. Finally, an application denied by a Superior Court judge may be appealed to the Appellate Division.

Permit to Purchase a Handgun

In order to purchase a handgun -- defined as a pistol, revolver, or other firearm originally designed or manufactured to be fired by the use of a single hand -- a permit is required. The application procedure is similar to the FPIC described above. N.J.S.A. 2C:58-3e. The appeal process of a denial by a chief of police or the State Police is the same as above. A permit to purchase a handgun is valid for 90 days from the date of issuance, and may be renewed for an additional 90 days for good cause shown. An application denied by the Superior Court may be appealed to the Appellate Division.

Permit to Carry a Handgun

A New Jersey Carry Permit is required in order to carry a handgun in the State. An applicant who is seeking a carry permit, like those seeking an FPIC or a handgun purchase permit, will initially submit the application to the chief police officer of the municipality in which the applicant resides. The application is submitted to the superintendent of the State Police if the applicant is an employee of an armored car company, if there is no chief police officer in the municipality where the applicant resides, or if the applicant does not reside in this State. The chief police officer, or the superintendent, as the case may be, shall cause the fingerprints of the applicant to be taken and compared with any and all records maintained by the municipality, the county in which it is located, the State Bureau of Identification and the Federal Bureau of Identification. The chief police officer or the superintendent will then approve or deny the application as appropriate. If denied, the applicant may appeal that decision to the Superior Court.

If the application has been approved by the chief police officer or the superintendent, the applicant is sent to the Superior Court of the county in which the applicant resides, or to the Superior Court in any county where he intends to carry a handgun, in the case of a nonresident or employee of an armored car company. The court shall issue the permit to the applicant if it is satisfied that the applicant is a person of good character who is not subject to any of the disabilities set forth in N.J.S.A. 2C:58-3(c), that he is thoroughly familiar with the safe handling and use of handguns, and that he has a justifiable need to carry a handgun. If the judge denies the application, the applicant may appeal such denial in accordance with law and the rules governing the courts of this State.

Retail Dealer License

A retailer of firearms and their employees are required to obtain a license to sell. The license to retail firearms is processed by the State Police similar to the procedure described above. When complete, the application (S.P.-649), including the license and investigative report, is forwarded to the Superior Court in the county in which the

applicant maintains his/her place of business. The judge shall grant a license to an applicant if he or she finds (1) that the applicant meets the standards and qualifications established by the superintendent (2) that the applicant can be permitted to engage in business as a retail dealer of firearms or employee thereof without any danger to the public safety, health and welfare (3) that the applicant is not subject to any of the disabilities which would prevent him/her from obtaining a permit to carry a handgun or a firearms purchaser identification card. The court may issue a license upon review or may conduct an evidentiary hearing. The applicant bears the burden of proving by a preponderance of the evidence that he or she qualifies for the license. There is a fee payable to the superintendent and the license is valid for three years from the date of issuance. N.J.S.A. 2C:58-2. Applicants for renewal licenses must follow the same procedure as for the initial application. Any person denied a retail license by a Superior Court judge may file an appeal with the Appellate Division.

License to Possess and Carry Machine Guns and Assault Firearms

Any person who desires to purchase, possess and carry a machine gun or assault firearm must apply to the Superior Court in the county in which he/she resides, or conducts his or her business if a non-resident. The application (N.J.S.A. 2C:58-5) should be filed with the Criminal Division Manager's Office along with a \$75.00 filing fee, made out to the State Treasurer. The applicant should provide the court with the same material as if he/she were filing an application for a permit to carry a handgun, as the judge cannot issue a license without making a finding that the applicant would qualify for such a license. All applications are forwarded to the county prosecutor's office for investigation and recommendation. The court must find that the applicant qualifies for a permit to carry a handgun, and that the public safety and welfare require issuance of the permit. Unless otherwise provided in the court order, the license is valid for one year from the date of issuance. N.J.S.A. 2C:58-5(d). The assault firearm license is valid for two years from the date of issuance. N.J.S.A. 2C:58-5(g). Licenses may be renewed in the same manner and under the same conditions as applying for the original application. Any person aggrieved by the decision may appeal to the Appellate Division.

Revocation of Permits and Licenses

Licenses, identification cards, and permits are subject to revocation on the application of the county prosecutor, the chief of police, any law enforcement officer or any citizen after notice and hearing of the issue by the court if (1) the applicant breached any of the conditions under which the license was granted, and (2) the holder no longer qualifies for the issuance of the license, permit to purchase a handgun or firearms purchase or identification card, or poses a danger to the public health safety or welfare. Additional information about gun permits can be obtained from the *Gun Permit Manual* published by the AOC Criminal Practice Division. This manual is available on the *InfoNet*.

13. Division of Child Protection and Permanency (DCPP) Referrals (formerly DYFS)

P. L. 2003, c.301, which was effective as of April 13, 2004, provides for the following: (a) establishes requirements for the collection of information regarding the care of minor children when the sole caretaker is being incarcerated and for referrals to DCPP in certain such situations; and (b) provides for referrals to DCPP in certain instances where an individual is convicted of one or more specifically enumerated offenses, the victim was under age 18 at the time of the offense, and the defendant lives in a household with minor children or is the parent of a minor child. The legislation is codified at N.J.S.A. 2C:44-6.2 through - 6.4 and N.J.S.A. 9:6-8.10(c) and 8.10(d).

When Person Being Incarcerated Is the Sole Caretaker of a Minor

The law provides that when a person is convicted of a crime for which he or she will be incarcerated, the court must order that, as part of the presentence investigation, a determination must be made as to whether the person being incarcerated is the sole caretaker of any minor child, and if so, who will assume responsibility for the child's care and custody during the period that the person is incarcerated. The law also provides that in those situations the presentence investigation must include (1) an inquiry and verification that the person who will be responsible for the child's care and custody during the period of the sole caretaker's incarceration has agreed to assume responsibility for the child's care and custody; and (2) a Promis/Gavel network check, juvenile central registry check and domestic violence central registry check must be completed on the person who will be responsible for the child's care and custody during the period of the sole caretaker's incarceration as well as any other adult or juvenile over 12 years of age who is a member of that person's household.

The law further provides that the court shall provide DCPP with the information resulting from these inquiries. Upon receiving this information collected by the court, DCPP must conduct a child abuse record information check to ascertain whether there have been any substantiated incidents of child abuse or neglect against the person who will be responsible for the child's care and custody or any adult or juvenile over 12 years of age who is a member of that person's household. If, based on the information provided by the court and the check of its child abuse records, DCPP determines that the incarcerated person's minor child may be at risk of abuse or neglect or that the child's emotional, physical, health care, and educational needs will not be met during the period of the sole caretaker's incarceration, DCPP must take appropriate action to ensure the safety of the child.

Conviction of Enumerated Offense Where Victim Was Under Age 18

P. L. 2003, c.301 also addresses the separate situation where an individual has been convicted of certain specifically enumerated offenses and the victim of the offense was under the age of 18 at the time. If in such situations, the person convicted of the crime is the parent of a minor child or resides in a household where there are other minor children, the court must make a referral to DCPP. The court must provide DCPP with the name and address of the person convicted of the crime, information on the person's

criminal history, and the name and address of each minor child of the defendant and/or any minor child who resides in defendant's household.

The Conference of Criminal Presiding Judges and Conference of Criminal Division Managers in conjunction with DCPP developed a two-part protocol to implement the legislation. The protocol was issued by Administrative Directive #4-04, which is available on the Judiciary InfoNet site.

14. Parole Supervision for Life (PSL)

On January 14, 2004, P. L. 2003, c. 267 became effective. The law amended N.J.S.A. 2C:43-6.4 to clarify that the previous type of lifetime community supervision for sex offenders, community supervision for life (CSL), is now parole supervision for life (PSL), which commences immediately upon the defendant's release from incarceration. The law removed the sentencing option of probation as an authorized disposition for crimes eligible for a sentence of parole supervision for life. The law applies to offenses that occurred on or after January 14, 2004.

When a defendant is sentenced for an offense subject to the provisions of N.J.S.A. 2C:43-6.4 and the imposition of sentence is suspended, the Criminal Division is required to notify the State Parole Board. On the day of sentence, the Criminal Division must fax a copy of the written documentation of the sentence and parole reporting instruction form to the Parole Supervision for Life Unit. The documents should include the standard cover letter as provided in the Criminal Division protocol for parole supervision for life cases. Within ten days of the sentence, the Criminal Division must mail a copy of the defendant's JOC and PSI, along with the standard letter provided in the protocol, to the Parole Supervision for Life Unit.

For additional information, please refer to the *Criminal Division Parole Supervision for Life Protocol*.

IV. COMPUTER SYSTEMS

Criminal judges and staff utilize a variety of computer systems to assist them in their daily responsibilities. The use of this technology has led to increased efficiency and productivity, but also to changes in the roles and responsibilities of various positions. Criminal Division Probation Officers, for example, remain responsible for preparing presentence investigation (PSI) and pretrial intervention (PTI) reports, as well as interviewing defendants, mentoring less experienced officers, conducting urine testing, and in many cases, maintaining the integrity of the State Police Computerized Criminal History (CCH) terminals as Terminal Agency Coordinators. Probation Officers also commonly serve as a judge's Calendar Coordinator, which includes many additional responsibilities, including but not limited to: monitoring cases to ensure compliance with speedy trial deadlines; entering and updating speedy trial data into eCourts; preparing court notices and calendars; communicating with attorneys in court to manage case

flow; analyzing backlog reports; reviewing cases and participating with judges and managers in team meetings related to calendar management; approving adjournments; reviewing calendars for completeness and accuracy; drafting correspondence; and writing case notes.

The following is a brief overview of the various systems accessed by Criminal Division judges, managers and staff. User guides are available for each system identified and can be obtained from your division manager or the AOC Automated Trial Court Services Unit (ATCSU).

A. Promis/Gavel

Promis/Gavel (P/G, Prosecutor Management Information System) is the statewide criminal case management and information system used by the Criminal Division of the Superior Court as well as by the Prosecutor Offices, in all twenty-one counties. It captures information concerning defendants who have been charged with indictable offenses and tracks the processing of those defendants from initial arrest through disposition. This system provides docketing, noticing, calendaring, statistical reporting, and case management reporting.

The Judiciary and the county prosecutors jointly oversee the system. County Prosecutors' Offices handle the initial entry of all case information (i.e., defendant, arrest and charge data). If the case is remanded or dismissed, the Prosecutor's Office "closes" the case and then notifies the originating Municipality of this decision via system-generated disposition letters. If the case is indicted, the criminal courts assume responsibility for the case and enter court events, motions, final disposition and sentencing. Promis/Gavel allows users to record, update, and inquire about the status of criminal case information.

In addition to serving as the criminal court official docket, Promis/Gavel provides local and statewide inquiry access to all law enforcement agencies and court personnel. The Public Defender's Office has inquiry access in all counties and restricted assignment update access in selected counties.

For each defendant in a case, the system maintains different types of information, which can be accessed for inquiry and/or reporting purposes. One of Promis/Gavel's most important functions is its ability to generate calendars, statistics and *ad hoc* reports. Promis/Gavel users can record and inquire about the following types of information: defendant detail information such as charges, warrants, arrests, bail, sentence, criminal restraining order status and scheduled event proceedings, assigned prosecutor, judge and defense attorney schedules, witness information, etc. In addition, counties can write programs to generate reports from Promis/Gavel for a variety of reasons. For example, if a county wanted to know how many days it took for defendants to be enrolled into PTI after an application was filed in court year 2002, a report can be run to determine that information.

B. Promis/Gavel Public Access

In order to provide the general public with access to limited criminal court information in Promis/Gavel, a public access system was developed. This “inquiry only” system is available to the public via public access terminals located in each Superior Courthouse. The system is accessed through a standard Web browser and information in Promis/Gavel that has been deemed confidential or not relevant to the general public is not displayed. This system is also available to Judiciary personnel via the Judiciary InfoNet. An on-line help system is available to all users to assist them with system navigation, field descriptions and explanations of abbreviated information. Additionally, via an application named “Criminal Conviction Information,” internet users accessing the Judiciary’s web page can view limited data on defendants who have been convicted and sentenced on an indictable offense.

For further information on the use of Promis/Gavel, refer to the *PROMIS/Gavel Inquiry Guide*.

C. eCourts

eCourts is a web-based application designed to allow attorneys in good standing to electronically file documents with the courts. It is a major part of the Judiciary’s initiative to convert its legacy systems into a modernized and integrated electronic filing application. eCourts is built on four essential functionalities: (1) electronic filing and information exchange between the court and attorneys; (2) the creation of an electronic filing system; (3) the establishment of an electronic case jacket; and (4) the maintenance of an electronic records management system that provides both attorneys and the public with access to case information.

On July 31, 2014, eCourts was implemented statewide for the electronic filing of certain Criminal Division motions and briefs. Subsequent enhancements were driven by Criminal Justice Reform, and include an automated risk assessment system to run the PSA, a new application to manage the work associated with monitoring defendants who were released pretrial, and a new speedy trial application to track and share speedy trial information with prosecutors and public defenders. A related enhancement was the implementation of a Municipal Case Jacket in 2017, which allows the municipal courts, law enforcement, prosecutors and defense attorneys to view complaints and PSAs for eligible defendants being processed under Criminal Justice Reform.

In the Criminal Division, eCourts provides attorneys with the ability to electronically file motions and other documents with the Court and receive electronic notification of filings, hearings and motion results on their cases. Criminal Division staff can track and process filings via a work list, which can be filtered to each staff member’s specifications. Criminal Judges can also view motions and motion-related documents, and revise and electronically sign orders. Criminal Division staff can upload motions and documents, such as a *pro se* Post Conviction Relief motion, into eCourts. All case actions and defendant information are displayed in an electronic file known as the Case

Jacket. As of December 15, 2016, all motions must be filed via eCourts, with certain limited exceptions.

D. Judgment of Conviction (JOC) Form Generation System

The Judgment of Conviction (JOC) system is a web-based system used throughout the State of New Jersey for the creation of Superior Court Criminal judgments of conviction, acquittal and dismissal. The system enables users to create JOC forms using data from pre-existing PSI forms in the Criminal Case Management (CCM) Report Generation System and data from Promis/Gavel (P/G). The JOC system also provides an organized workflow between users of the system.

As of December 2014, finalized JOC PDFs are available on the eCourts Case Jackets. These finalized JOC forms are electronically signed and dated and considered to have the same force and effect as the original, manually signed JOC.

The New Jersey Department of Corrections, State Parole Board and county jails have access to an external version of JOC (eJOC) to view/print final JOCs and their accompanying PSIs.

Available on specific terminals within each county, as of December 2014, is a public access version of JOC. This application allows the public to view/print final JOCs. As of June 30, 2017, finalized JOCs are publically available via the New Jersey Courts Internet.

E. Criminal Case Management System (CCM)

The Criminal Case Management (CCM) system is a statewide web-based application utilized by the staff in Criminal Case Management in each county to create indigency reports (5A forms), Pretrial Intervention (PTI) reports, and Presentence Investigation (PSI) reports. The CCM system enables retrieval of data from other automated court systems for the preparation of various reports and provides inquiry access to the supervisory probation users.

F. Automated Complaint System (ACS)

The Automated Complaint System (ACS) is the statewide case management and information system of all criminal and quasi-criminal non-traffic matters initiated in the Municipal Court system. ACS provides statewide inquiries of defendants and warrants. ACS tracks and schedules cases, generates management and statistical reports, court calendars, notices, driver's license suspensions, cash receipt journals, disbursement reports, and time payments. ACS electronically sends driver's license suspension information directly to the Motor Vehicle Commission (MVC) database.

ACS interfaces with Criminal and Family Superior Courts. Indictable criminal cases are transferred to the county prosecutor through the interface with Promis/Gavel. The

prosecutor can remand cases back to ACS through the interface. Dispositions on the Superior Court level are recorded and warrants are recalled in ACS via an interface, eliminating a manual process. The State Police flags defendants that have been identified through fingerprints in ACS. ACS also interfaces with Criminal and Family systems to propagate the fingerprint identifier.

For further information on the use of the ACS, refer to the *ACS Inquiry Manual*.

G. Automated Traffic System (ATS)

The Automated Traffic System (ATS) is the statewide case management and information system for traffic matters initiated in the Municipal Court system. ATS also provides financial processing and the direct exchange of information between MVC and the municipal courts. ATS provides for statewide inquiries of driver's license suspensions, cash receipt journals, disbursement reports, and time payments. For further information on the use of ATS, refer to the *ATS Guide*.

H. Municipal Automated Complaint System (MACS)

The Municipal Automated Complaint System (MACS) is a web-based application developed to replace ATS and ACS case management functions. MACS currently allows users to perform ticket and complaint entry, calendaring, scheduling, and case summary and calendar searches on municipal cases.

I. County Correction Information System (CCIS)

The County Correction Information System (CCIS) records information about inmates housed in New Jersey county correctional facilities. CCIS centralizes county jail information in a single statewide inmate tracking system. The system allows users such as the Criminal, Probation, and Family Divisions, as well as municipal, county, state and federal law enforcement agencies, to conduct inmate inquiries for both active and discharged inmates. This access enhances the court's ability to manage jail cases and ensure that detained pretrial inmates are disposed with priority and managed efficiently.

For each inmate who enters a county jail, CCIS maintains different types of information that can be accessed for inquiry purposes. Users are able to access inmate identification information, charges, bail, court events, custody status, detainers, sentences, discharge, date, and commitment summary data.

Criminal Division staff access this system to gather information in the preparation of bail review lists, bail reports, PTI applications, presentence reports, and scheduling court events.

Additional information regarding the use of CCIS may be found in the *CCIS Inquiry Guide*.

J. Offender Based Correctional Information System (OBCIS)/iTAG

The Offender Based Correctional Information System (OBCIS) is the New Jersey Department of Corrections main computer system. A new system, iTAG, is also now utilized. The system is designed to electronically collect basic offender information when an offender enters the state correctional system. In addition, the system tracks the offender from his or her admission into the state correctional system through parole to the offender's maximum expiration date. The primary purposes of OBCIS include the maintenance of an on-line tracking system to determine an offender's location and status, retention of an inmate's historical movement within the Department of Corrections, a collection of data sources for policy analysis and budgeting purposes, and collection of data for state and federal criminal and juvenile justice agencies, including the Internal Revenue System (IRS) and the Bureau of Immigration and Customs Enforcement (ICE).

For further information, see the *OBCIS Inquiry Manual*.

K. Family Automated Case Tracking System (FACTS)

The Family Automated Case Tracking System (FACTS) is the statewide case management and information system for the Family Division of the Superior Court. The primary goal of the system is to streamline case processing and to provide on-line management, case history, and state inquiries. FACTS can generate management and statistical reports, court calendars, and notices. FACTS captures all Family Division information from the point of acceptance of a complaint through the dispositional or final judgment process. FACTS docketes and indexes all matters of juvenile delinquency, dissolution, non-dissolution, domestic violence, family crisis, abuse and neglect, and guardianship. FACTS also generates the complaint forms for non-dissolution and domestic violence. Case management/tracking reports and monthly statistics are available through FACTS for all case types in the Family Part. FACTS contains a variety of on-line summary inquiries at a case and party level.

To aid the courts and law enforcement agencies in dealing with domestic violence and juvenile delinquency matters, the Domestic Violence Central Registry (DVCR) and the Juvenile Central Registry (JCR) were developed. The registries are inquiry systems that display information in a concise and easily accessible manner. The DVCR displays information about all FV (domestic violence restraining orders) and FO (contempt of domestic violence restraining orders) cases for a particular individual. The DVCR was updated in July 2015 to include searches for criminal restraining orders, including Sex Offender Restraining Orders (SORO/Nicole's Law) and Stalking Restraining Orders that are stored in Promis/Gavel. The DVCR is available to the courts, prosecutors and local and state law enforcement. The JCR displays information about all FJ (juvenile delinquency) matters. The JCR is only currently available to the courts. Whenever a case involving domestic violence, a domestic violence restraining order or juvenile delinquency is entered into FACTS, the information is immediately accessible in the registries.

For further information refer to the *FACTS Inquiry Guide*.

L. Central Automated Bail System (CABS)

The Central Automated Bail System (CABS) is the statewide information system for all bail money received by the Superior Court. Data is entered into CABS when bail is posted for a defendant. All bail collected must be entered into CABS, including family and juvenile cases. CABS records the posting of bail and the following related functions: inquiry, posting, refund/discharge, forfeiture, reinstatement, liens, transfers, and disbursements. CABS also provides access to on-line journal reports. Daily batch reports are available in the Report Management Distribution System.

A Promis/Gavel and CABS interface links the related P/G case to the bail. Data is brought over from either CCIS or P/G. Once a link is established with P/G, the link will provide easy access to the P/G data from the bail inquiry screen. The links will also provide the CABS user with various lists that will assist in forfeiting and disposing of bail cases in a timely manner. In those matters in which bail is entered into CABS before the related cases are entered into P/G, the users will be able to access a link proposal list and link these matters after their initial entry into CABS.

For further information on the use of CABS, refer to the *PROMIS/Gavel CABS Integration System Manual* and *CABS Training Guide*.

M. Comprehensive Automated Probation System (CAPS)

The Comprehensive Automated Probation System (CAPS) is the statewide case management information system for New Jersey Adult and Juvenile Probation. CAPS provides automation for the Probation Divisions to manage the major functional areas of their caseload: supervision, community service, financial collections, and restitution.

CAPS enables probation officers to process defendants from the time they enter the criminal justice system until the conditions of their probation are satisfied or revoked. All financial collection activities related to a defendant are recorded and monitored in CAPS. Moreover, CAPS provides disbursement of court ordered restitution, fees, fines and penalties. CAPS also manages the financial collection activities for the Adult and Juvenile Intensive Supervision Programs (ISP and JISP).

V. RECORDS RETENTION AND MANAGEMENT

The Supreme Court, Superior Courts and Municipal Courts must retain records of their proceedings. Some records are considered permanent; others are on a time schedule for destruction. Directive #3-01, which was adopted on March 16, 2001 and supplemented on March 7, 2017, delineates which records must be kept and for how long. This retention schedule was created in conjunction with a policy statement from

the Supreme Court citing what the schedules should be based upon. The policy statement regarding retention and management of court records is as follows:

The preservation of court records is important both to litigants and the public generally. The Supreme Court believes that a sound approach to the preservation of records in a modern court system must be based on three principles -- retention of an appropriate combination of automated and hard copy case information; a sound program of purging papers which are deemed unnecessary for permanent retention; and a system that begins the purging process by eliminating extraneous papers as early in the process as possible. The retention process must not burden strained resources and budgets with the need to save everything.

Therefore, the Supreme Court directs that retention of court case files be governed by the likely use of the files after disposition and that appropriate retention schedules and purging lists are developed to establish the preservation of court records based on a process that utilizes automated case information and retains hard copy case information only as necessary and permits the elimination of extraneous papers in accordance with the provisions of R.1:32-2.

There are 38 sections in the Records Retention Schedule. The Criminal Division Records are listed in section 18. Previously, much of the information the Criminal Division compiled was deemed permanent; could not be destroyed and should be maintained in a fashion that would allow it to be available forever. Space and money constraints became more and more pressing over time. The new retention schedule allows records to be destroyed after a certain number of years, freeing space for new records.

For further information, see the *Law Division – Criminal Records Retention Schedule*.

VI. CRIMINAL DIVISION OPERATION STANDARDS

A number of things have changed in the Criminal Division since the Criminal Division Operating Standards were approved in 1992. Caseloads have increased, the number of new criminal laws has increased, and drug courts have become operational in every vicinage. However, the basic principles outlined in the Operating Standards remain the bedrock for the operation of the Criminal Division.

A. BACKGROUND

The Criminal Division Operating Standards arose from a review of overall experience in the Criminal Division during the course of the Speedy Trial Program in the 1980s, as found in the various innovative procedures developed amongst the counties and recommended by the Judicial Conferences of 1980, 1986 and 1990. They were carefully and fully debated by the Conference of Criminal Presiding Judges with representatives from the private bar, the Public Defender and County Prosecutors Offices, and by the Conference of Division Managers, and reflect the consensus, but not unanimity, of both groups. Reservations and qualifications of the standards are included in the commentaries.

A brief review of the background to these standards will be helpful. In 1981, during the initial year of the Statewide Speedy Trial Program, the focus was on assembling, for the first time in many counties, the major components of the adversarial system for a mutual planning process. The Supreme Court promulgated rules that ensured that cases received management attention soon after indictment, rather than late in the process. The Court also established time goals and numerous experimental projects began.

After some initial progress, it soon became apparent that planning and early case management could accomplish only so much within the current administrative structure. The Committee on Efficiency found the Court system to be "unmanageable" in 1982 due to a fragmented organization. The subsequent Management Structure Program reorganized and focused court support resources according to the major divisions of court, and established the Conference of Criminal Presiding Judges and the Office of the Criminal Division Manager.

The overall Speedy Trial Program was reviewed at the Judicial Conference of 1986. Many standards were approved at that conference. Some called for a continued rigorous local planning process searching for and resolving causes of delay. The nature of the planning process was defined further, providing for broad participatory management and local flexibility within an overall framework for case flow processing. Other standards identified specific objectives that should be accomplished early on in the process, and called for central judicial processing (CJP) and remand courts to accomplish those objectives. The report also recognized the responsibility of the prosecutor to screen cases with consideration of available judicial resources. Other standards called for streamlining PTI, meaningful pretrial conferencing, offers of judgment, and date-certain trial lists of 5-7 cases per week per judge.

With the advent of the War on Drugs in 1987, management attention turned to the sudden and tremendous surge of case filings. The whole system strained under mounting backlogs. The Special Committee to Assess Criminal Division Needs studied resource needs. Their report called for a rebalancing of resources by adding more public defenders, and then a further general increase of 17 judicial units (judge, prosecutor, defense, support). The Committee also suggested performance standards of 500 dispositions per judicial unit. Finally, it called for the statewide adoption of

proven management techniques such as CJP, individual calendars, and differentiated case tracking.

In 1990, a Statewide Task Force on Drugs and the Courts reported to the Judicial Conference on various case processing strategies. Reiterating the work of ten years of learning under the Speedy Trial Program, its report called for the system to work harder and smarter. Recommended changes included: the greater availability of drug assessments, vigorous prosecutorial screening, case tracking, more resources, individual calendars, future and meaningful court event preparation, plea cut-offs, and performance standards.

A ten-year review of the Speedy Trial Program identified a number of standards, which should govern the operation of the Criminal Division statewide. While diversity gave rise to much learning over the decade, there continued to be a need to draw from the experience and add proven procedures to the statewide framework for criminal case processing. The broad differences in productivity from county to county required the implementation of proven systems in all counties.

B. APPROVED STANDARDS FOR THE OPERATION OF THE NEW JERSEY CRIMINAL DIVISION OF SUPERIOR COURT, APPROVED BY THE NEW JERSEY SUPREME COURT - JUNE 2, 1998

I. As a general rule, individual calendars are preferable to master or central calendars and should be used. Indictments should be assigned to judges upon presentment for handling of all matters through final disposition.

Most counties in New Jersey currently utilize individual calendars. Master calendars seem to work best in situations where an extraordinarily productive judge runs the calendar, however, they rely heavily upon that judge for their momentum. They do not promote the opportunity for individual judges to learn how to effectively run a list. In this respect, the talents and managerial abilities of judges are not utilized, and an important resource is lost to the system. There is a significant view that some judges may simply not be able to manage a calendar, although in many counties all judges are currently assigned individual lists of cases. In any event, it is likely that the emergence of case management teams, as described in standard IV, will further assist judges in calendar management. Some judges may need to work closely with the presiding judge in managing a calendar, and the extent of the presiding judge's involvement should depend on the situation. However, in concert with full case management teams, and after sufficient training, this approach will work for nearly all judges who run a criminal list full-time and have adequate defense resources for that list. Accordingly, the implementation of this standard will have to recognize the need for some flexibility. An individual calendar clearly optimizes the organizational values held by the Judiciary, particularly the need to promote independence, consistency, familiarity, accountability, productivity, and development of human resource potential. The report of the Task Force on Drugs and the Courts in 1990 recommended, "The most effective organization of resources is one that focuses on individual cases assigned to specific courts."

II. In order to facilitate early case management, each case should be scheduled for a pre-indictment event. On or before that date, the Intake Unit of the Criminal Division should complete the uniform defendant intake report and must be cautious not to offer any legal advice to defendants.

Traditionally, first appearances have been conducted in Municipal Court and, other than for bail review, the first involvement with a case by the Superior Court occurred subsequent to indictment. This practice began to change in the early 1980s with the advent of CJP and other pre-indictment (PIP) programs. These programs provide an excellent forum for screening, intake, diversion, and early case conferences before indictment.

One of the clearest lessons learned during the last decade, heralded in all major Task Forces which address the criminal system, is that it's important to get a good handle on cases at the start. This includes early notice to the prosecutor and court of indictable charges, expeditious receipt of police and investigative reports, exchange of routine discovery, entry of appearance of defense counsel and early contact with the defendant. This enables the prosecutor to screen cases, and to advise the court regarding which cases will be dismissed or remanded.

For cases, which will continue as indictable charges, the court should move affirmatively to resolve threshold issues such as defense representation and intervention ("PTI") eligibility. Then, cases, which are amenable to a fast track pre-indictment plea conference, can be so scheduled. Other cases should be set for indictment, and prepared for post-indictment processing.

This standard recognizes that the particular emphasis of existing pre-indictment programs (PIP) varies somewhat. In some counties, such as Hudson County, the focus is on prosecutor screening and so the hearing occurs right after arrest. In other programs, such as Camden and Passaic, the focus includes case conferencing, and thus the hearing is delayed a bit to accommodate the needs of plea negotiations. Often, selected cases are scheduled for a plea conference. A few counties prefer to await the completion of prosecutor screening in order to conserve resources and handle only those cases, which will be presented for indictment. A key to this process is the presence of an experienced prosecutor and public defender who are able to identify those cases, which can be disposed at an early date. Private counsel may elect to represent third or fourth degree offenses at these events at a reduced fee if they are not to be inextricably locked into the case at this phase of the process. Thus, this standard endeavors to find a common ground, calling only for a pre-indictment event and an intake to promote case management, but leaving the timing and the focus of the event up to the individual counties.

The implementation of CJP type programs was supported at the Judicial Conferences in both 1986 and 1990, and was strongly urged by the Chief Justice's Special Committee

to Assess Criminal Division Needs in 1989. Of course, the implementation of such a program requires some additional resources at first.

III. Upon indictment, the court should schedule an event with counsel present to satisfy arraignment requirements and to inform the court regarding the disposition or future procedural needs of the case. If not previously done, such a conference should be preceded by an intake interview by court staff. Future events should be scheduled, not by rote, but according to the differentiated needs of each case. Reasonable adjournments should be granted to avoid meaningless events.

Before a case is set for trial, a conference should be held in open court with the defendant present. Only after discovery has been exchanged, and necessary motions decided, a plea cut-off rule should be implemented and the defendant advised of the offer, the sentence authorized by statute and that negotiations will terminate as ordered by the court. Trial lists must be credible, certain, and limited in number. The priority of cases on the trial list should be set by and enforced by the judge only, and not unduly influenced by either party.

The essence of this standard is that court events must be meaningful, and that the waste of valuable resources for perfunctory or ineffective hearings must stop.

Therefore, the first court event after indictment must be with counsel present. This means that the judge/prosecutor/defense team must be identified beforehand, as soon as possible, and assigned the case. Indigence issues should be resolved prior to this event. It is also quite important that discovery be previously exchanged. An informal pre-arraignment event soon after indictment, or such as described in standard II, can be quite useful in preparing for the first arraignment/status conference. Support staff should gather the required information at these initial interviews, but should avoid giving any legal counsel to unrepresented defendants.

It is important to emphasize the need to avoid unnecessary court events. In some jurisdictions the waste of time for attorneys, judges, and others during court events, which do not achieve their purpose, is high. Therefore, conference and trial lists should be reviewed ahead of time by staff to ensure that each case is truly ready for a scheduled court event. If problems can't be resolved by the scheduled date, adjournment should be granted, but only for enough time to get the job done. At the 1990 Judicial Staff College, the Criminal Division Managers and Team Leaders detailed the services, which should be provided to judges in preparing for future court events. These include notating calendars with useful information, correcting errors, ensuring that attorneys are notified, packaging co-defendants or other pending charges, checking on PTI status, checking open warrants, ensuring that motions are resolved, and ensuring that writs are effectuated. When events are not meaningful, precious resources are wasted, and so, great savings can be made by event monitoring. While the judge must still run the calendar, the assistance of a staff coordinator can save everyone a lot of time.

Plea cut-offs have been debated at length in New Jersey. Some people are concerned with the fairness of cut-offs to defendants who may not fully understand the process; others are concerned with forcing unnecessary trials, particularly in smaller counties. The offer of a better plea only prior to motions being heard as a policy would discredit the process. [However, when fairly applied, plea cut-off is highly effective and is probably the key to the extraordinary efficiency found in several counties. Its fair application first requires (1) that all plea negotiations have been exhausted, (2) that no other action is required, (e.g., the prosecutor has seen witnesses, all necessary motions are resolved), and (3) that the defendant has been fully advised of the effects of the plea cut-off.] Significant training is needed to make the procedure universally effective and fair.

The standard states that the plea cut-off rule should be implemented only after discovery has been exchanged and necessary motions decided. "Necessary" motions are defined as those, which need to have been resolved before effective plea negotiations can occur. This standard recognizes that motions deemed significant in one case may be less significant in another. The standard is designed to allow for a determination of those issues that need to be decided prior to effective plea negotiations, without otherwise delaying the implementation of plea cut-offs.

When an exception to the plea cut-off is requested by either attorney, the matter could be referred to the presiding judge as a policy to develop uniformity of the plea cut-off. Unforeseen changes in circumstances evaluated by the judge may allow for a continuance of a case.

The 1990 Task Force on Drugs and the Courts has recommended a three track (diversion, early plea, serious case) approach for drug cases. Other projects have tested the use of fast track/standard track procedures given differentiated case needs. This approach to calendar management is broadly used and merits statewide implementation, at least insofar as cases amenable to early disposition should be tracked to an early conference and the remainder tracked to indictment.

Finally, the use of trial calls to churn large numbers of cases is widely considered counterproductive to efficiency, and wasteful of the time of all those, including police and lay witnesses, who are affected by trial subpoenas. Task Forces reporting to the Judicial Conference in 1986 and again in 1990 stated that the current consensus recommendation for trial lists calls for no more than 7-10 cases listed per week. More than that leads to uncertainty, churning, and wasted effort. Obviously, this can only occur if parties cooperate to resolve cases before trial call, and if a plea cutoff rule is in place and enforced.

IV. The role of the Office of the Criminal Division Manager includes four major functions: the preparation of investigative reports; case flow management; records management; and general administrative functions. The organizing principle for the structure of the office should be the judge, and those cases

assigned to the individual judge. Staff should then be allocated to judges in a team approach with the report writing and case flow management function primarily located in the teams assigned to each judge.

At the Judicial Staff College, the Criminal Division managers and team leaders identified the following major functions and activities:

1. Case Flow/Calendar Management

- Assignments
- Scheduling/Calendaring/Notices
- Adjournments/Continuances
- MEANINGFUL EVENT PREPARATION
- Enforcement of Scheduling Orders
- Resolve Attorney Conflicts

2. Preparation of Reports (Bail, PTI, PSI, Indigence)

- Investigation
- Interviews
- Writing Reports
- Meeting Deadlines

3. Records Management

- Dockets/Logs and Indexes
- Computerization
- Case File Maintenance
- Statistics (Reports and Analysis)
- General Inquiries

4. Administration

- Budgeting
- Personnel Management
- Facilities
- Collections
- Training
- Inter-Agency Coordination
- Management Planning
- Jury Coordination
- Interpreters

Some managers reported a supervision function for bail cases, PTI cases, and sentenced offenders. However, these functions are assigned to the Probation Division in most counties.

It was the consensus, as recommended by the Task Force on Drugs and the Courts, that the team approach, with staff assigned to individual courts, was the most productive and efficient structure. It better develops the talents of staff, and provides for a better quality of administration. Sufficient resources must be available to staff the individual courts in the team structure. Precautions should be made to safeguard the objectivity of the presentence investigation report writers, should such assignment cause report writers to gear their reports to a particular judge's liking.

V. The establishment of divisional policies involving procedural or organizational matters should result from the full participation, and, if possible, consensus of the judges, prosecutors, defense counsel and other interested agencies involved. While the responsibility of the Judiciary is to provide a simple and stable framework for case processing, communication within and without through a formalized and consistent planning framework is necessary. Local Speedy Trial Delay Reduction Committees are to meet regularly, review recent performance, review older cases, identify and resolve problems, and review developments in other jurisdictions. Judges should meet regularly amongst themselves with the division manager and the presiding judge should meet as needed with court support teams or other individual components of the system.

It was reported by the 1986 Task Force on Speedy Trial that no set of programs or procedures will work unless each of the three main components participate in the development of goals, are committed to those goals, and cooperate in their achievement. An essential aspect of cooperation and coordination is a mutual respect for the interests and responsibility of each participant. The relative health of the criminal calendars in most counties seems highly dependent on whether the various components are able to accomplish such coordination on administrative issues. Local Speedy Trial Planning Committees should meet at least quarterly. A critical role for the Assignment and Presiding Judge is to ensure that such dialogue occurs regularly, in an environment conducive to problem solving and conflict resolution. It is important that the Criminal Bench meet every week, if just for a formal luncheon. Such meetings should begin with a discussion of issues related to the week's calendars, and then should focus on general problems. An invitation to guests from relevant agencies can establish a useful communication link.

VI. The administration of justice relies heavily; perhaps more than many institutions, on information, and thus the quality of justice depends on the accuracy and availability of such information. Automated systems such as PROMIS/GAVEL and the County Jail Information System are in place in nearly all counties. Procedures must be in place, which assure the integrity, completeness, and accuracy of this information, and its full utilization by all involved.

Duplicative manual systems should be eliminated to save resources and promote reliance on the primary information system.

The following is taken from the Report of the Adjudication Committee to the 1990 Task Force on Drugs and the Courts:

Volume increases in the caseload, largely due to the influx of drug cases, have sent the court system reeling. Court personnel, trying to keep their heads above water, are sometimes forced to compromise quality in preparing reports. Computer information is often incorrect, or reports are not available. Contributing to this problem is the fact that criminal histories, generated by the Court Disposition Report (CDR) system, are often incomplete, are received long after court events have occurred or need to be deciphered and retyped before being used in court reports. All of these cause problems in the completeness and accuracy of reports judges receive and in the resultant quality of decision-making.

Computerization, while helpful, is often fragmented with one system unable to talk to another. In some systems the inability to create new reports is a problem and problems have also been noted by judges who call from lists that do not contain up-to-date information, causing needless adjournments and meaningless court events.

Commitments need to be made at the highest levels towards computerization. Computer systems need to be able to communicate with one another and be able to transfer data from one to another. This will enable the elimination of duplicative manual systems, currently draining scarce resources. Additionally, computer systems need to be user friendly. Getting information from the system should be as easy as entering it.

Until PROMIS/GAVEL automation is fully capable of producing reports on which the courts can completely rely, manual systems will not be disallowed.